Field

Nov. 12. 1880

12-214

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

No. 823. 65

THE STEAMSHIP BENEFACTOR, HER ENGINE, &C., THE NEW YORK AND WILMINGTON STEAMSHIP COMPANY, CLAIMANT, APPELLANT,

vs.

WILLIAM H. MOUNT, ADAM PARTRIDGE, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED OCTOBER 22, 1877.

SUPREME COURT OF THE UNITED STATES.

No. 323.

THE STEAMSHIP BENEFACTOR, HER ENGINE, &C., THE NEW YORK AND WILMINGTON STEAMSHIP COMPANY, CLAIMANT, APPELLANT,

vs.

WILLIAM H. MOUNT, ADAM PARTRIDGE, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

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1 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 4th day of March, 1875.

Present, Hon. Charles L. Benedict, district judge.

WILLIAM HIRST ET AL.
vs.
THE STEAMSHIP BENEFACTOR, HER ENGINES, &c.

The libellants in the above action appear and file their libel against the above named steamship, in the words and figures following, to wit:

To the honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York.

The libel and complaint of William Hirst, Charles Luken, Hugh McAdam and John Collins, of said district, late seamen on board the schooner Susan Wright, against the steamship Benefactor, her engines, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime. And thereupon the libellants allege and articulately propound as follows, to wit:

2 First. That the said steamship Benefactor, together with her engines, tackle, apparel, and furniture, are now within the jurisdiction of this honorable court.

Second. That the said libellants were seamen on board of the said schooner Susan Wright, on her last voyage from Matanzas, Cuba, for the port of New York.

Third. That on or about the seventeenth day of February, one thousand eight hundred and seventy-five, at about ten o'clock in the morning of that day, said vessel, in the prosecution of her said voyage, and being at the time in charge of a duly licensed pilot, had reached the vicinity of Squam, off the coast of New Jersey, the weather being fair, the wind about west-northwest, and baffling, and the said schooner close hauled, and heading about north to north-northwest, when the said steamship Benefactor was observed by those on board the said schooner on the lee or starboard bow of the said schooner, distant from two to three miles, and heading about south-southwest, and for the course of the said schooner under full headway, and having sails set, with the wind free; that the said course and direction of the said steamer was continued without change of direction or speed, and the vessels thereupon came in contact; the said steamship Benefactor under full headway and with great force striking the starboard quarter of the said schooner, with her stem (the said Benefactor being an iron vessel), and hereby cutting and tearing away the said schooner, and in consequence which the said schooner sunk, and the crew, by climbing into the rigging, were barely able to escape with their lives to a pilot boat which came to their assistance.

Fourth. That the said schooner, together with tackle, apparel, and furniture, the cargo laden on board, provisions, personal effects
3 of the officers and crew have, in consequence of such damage, become a total loss.

Fifth. William Hirst lost personal effects to the amount of two hundred dollars.

Charles Luken, personal effects and money to the amount of two hundred and forty-five dollars.

Hugh McAdam, tools, money, and personal effects to the amount of seven hundred and ninety-five dollars.

John Collins, personal effects to the amount of one hundred and seventy-five dollars, and making in the aggregate the sum of fourteen hundred and fifteen dollars.

Sixth. That the said damage was not owing to the want of skill, care or seamanship on the part of your libellants, nor those having charge and control of said schooner, but was owing solely to the negligence of those navigating and controlling said steamship Benefactor, among other matters in that the said steamship should have avoided the said schooner, the former being propelled by steam, and of such by law required to keep out of the way of sailing vessels; in that said schooner was close hauled, while the said steamer had the wind free, and should for that reason have avoided said schooner; in that, as your libellants are informed and believe, there was no counter look out or wheelsman on board the said steamship Benefactor; in that the said steamship was racing with another vessel, as your libellants are informed and believe.

Seventh. That payment has been demanded and refused.

Eighth. That all and singular the premises are true, and within the jurisdiction of this honorable court.

4 Wherefore the libellants pray that process in due form of law may issue against said steamship Benefactor, her engines, tackle, apparel, and furniture, and that all persons having or pretending to have any interest therein may be cited to appear and answer all and singular the matters so as aforesaid propounded, and this honorable court would be pleased to pronounce for the damages aforesaid with costs, and to condemn said steamship, her engines, &c., to be condemned to pay the same, and for such other and different relief as may to law and justice appertain.

JOHN COLLINS.
W. HIRST.
CHARLES LUKEN.

Sworn to before me this 1st day of March, 1875.
[L. S.] T. F. HASCALL,
Notary Public, N. Y. Co.

BEEBE, WILCOX & HOBBS,
Libellants' Proctors.

(Endorsed:) Libel. Filed March 4th, 1875.

5 At a stated term of the district court of the United States o America for the eastern district of New York, held at the United States court rooms in the city of Brooklyn, on the 4th day of March, 1875.

Present, Hon. Charles L. Benedict, district judge.

WILLIAM MOUNT ET ALS.
vs.
THE STEAMSHIP BENEFACTOR, HER ENGINES, &C.

The libellants in the above action appear and file their libel against the above-named steamship in the words and figures following, to wit:

To the honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York.

The libel and complaint of William H. Mount, Adam Patridge, Gor-

to determine; that the personal effects of the [illegible], and
sums of money, amounted as near as at present can be ascertained to
the value of fifteen hundred dollars; that the provisions on board said
vessel were of the full and fair value of one hundred and fifty dollars;
that the freight on said cargo amounted to two thousand and forty-eight
dollars; and amounting in the aggregate to the sum of one hundred and
three thousand six hundred and ninety-eight dollars.

Charles Luken, personal effects and money to the amount of two hundred and forty-five dollars.

Hugh McAdam, tools, money, and personal effects to the amount of seven hundred and ninety-five dollars.

John Collins, personal effects to the amount of one hundred and seventy-five dollars, and making in the aggregate the sum of fourteen hundred and fifteen dollars.

Sixth. That the said damage was not [illegible]l, care
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don D. White, Arion B. Longstreet, Dennis Yow, Adam B. Jackson, Seneca Patridge, and Justice Nelson, of said district, against the steamship Benefactor, her engines, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime, and thereupon the libellants allege and articulately propound as follows, to wit:

First. That the said steamship Benefactor, together with her engines, tackle, apparel, and furniture, are now within the jurisdiction of this honorable court.

6 Second. That during the times hereinafter mentioned, the libellants were the true and only owners of the schooner Susan Wright, and that at such times, and up to the time of the happening of the collision hereinafter stated, the said schooner was tight, staunch and strong, and well and sufficiently manned, tackled, appareled, and furnished.

Third. That on or about the seventeenth day of February, one thousand eight hundred and seventy-five, the said schooner, then under the command of your libellant, William H. Mount, was lying in the port of Matanzas, Cuba, and had received on board a cargo of four hundred and sixty-two hogsheads and two hundred boxes of sugar, to be safely transported in said vessel, and delivered to the consignees or owners thereof, at the port of New York; and that on said day, the said vessel, laden as aforesaid, sailed from the port of Matanzas, bound to the port of New York, and had reached in safety, on the twenty-sixth day of February instant, at about ten o'clock in the morning, the vicinity of Squam, on the coast of New Jersey; the weather being fair, the wind about west-northwest and baffling, and the said schooner, close hauled and heading about north to north-northwest, and in charge of a duly licensed pilot, when the said steamship Benefactor was observed by those on board the said schooner on the lee or starboard bow of the said schooner, distant from two to three miles, and heading about south-southwest, and for the course of the said schooner under full headway and having sails set, with the wind free; that the said course and direction of the said steamer was continued without change of direction or speed, and the vessels thereupon came in contact, the said steamship Benefactor, under full headway and with great force striking the starboard quarter of the said schooner with her stem (the said Benefactor being an iron vessel), and thereby cutting and tearing away the said starboard quarter of

7 said schooner, and in consequence of which the said schooner sunk, and the crew, by climbing into the rigging, were barely able to escape with their lives to a pilot boat which came to their assistance.

Fourth. That the said schooner, together with her tackle, apparel, and furniture, the cargo laden on board, provisions, personal effects of the officers and crew, have, in consequence of such damage, become a total loss.

That the said schooner Susan Wright, together with her tackle, apparel, and furniture, were of the full and fair value of twenty-five thousand dollars; that the cargo laden on board was of the full and fair value of seventy-five thousand dollars, as near as your libellants are able to determine; that the personal effects of the libellant, Mount, including sums of money, amounted as near as at present can be ascertained to the value of fifteen hundred dollars; that the provisions on board said vessel were of the full and fair value of one hundred and fifty dollars; that the freight on said cargo amounted to two thousand and forty-eight dollars; and amounting in the aggregate to the sum of one hundred and three thousand six hundred and ninety-eight dollars.

Fifth. That the said damage was not owing to any negligence, want of skill, care, or seamanship on the part of your libellants, nor those having charge and control of their said vessel, but was owing solely to those navigating and controlling the said steamship Benefactor; among other matters in that they were negligent in not avoiding your libellant's vessel, she being a sailing vessel and the said Benefactor a steam vessel, and as such by law required to keep out of the way of sailing vessels; in that there was no proper or competent lookout or
8 wheelsman in charge of the said steamship Benefactor at the time of the collision; in that the said schooner being close hauled had the right of way, and the said steamship should have avoided her; in that the said steamship Benefactor, as your libellants are informed and believe, was racing with another vessel.

Sixth. That payment has been demanded and refused.

Seventh. That all and singular the premises are true and with*out* the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore, the libellants pray that process in due form of law may issue against said steamship Benefactor, her engines, &c., and that all persons having or pretending to have any interest therein may be cited to appear and answer all and singular the matters so as aforesaid propounded, and that the honorable court would be pleased to pronounce for the damages aforesaid, and to condemn the said steamship, her engines, &c., to be sold to pay the damages aforesaid, with costs, and that the libellants may have such other and further relief as may be just.

WILLIAM H. MOUNT.

Sworn to before me this 27th day of February, 1875.

T. F. HASCALL,
Notary Public N. Y. Co.

BEEBE, WILCOX & HOBBS,
Libellants' Proctors.

(Endorsed:) Libel. Filed March 4th, 1875.

9 EASTERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the eastern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States for the eastern district of New York, on the 4th day of March, in the year of our Lord one thousand eight hundred and seventy-five, by William Hirst, Charles Luken, Hugh McAdam, and John Collins, vs. The steamship Benefactor, her tackle, engine, &c., in a cause of collision; amount claimed, $\$1{,}415\frac{50}{100}$.

For the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamship or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had that the said steamship or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellants:

You are therefore hereby commanded to attach the said steamship or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to

say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court to be held in and for the eastern district of New York on the 24th day of March, 1875, at twelve o'clock noon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Charles L. Benedict, judge of said court, at the city of Brooklyn, in the eastern district of New York, this 4th day of March, in the year of our Lord one thousand eight hundred and seventy-five, and of our Independence the ninety-ninth.

B. LINCOLN BENEDICT, *Clerk.*

BEEBE, WILCOX & HOBBS,
Proctors for Libellant.

In obedience to the within monition, I attached the steamship Benefactor, &c., therein described, on the ninth of March, 1875, and have *not* given due notice to all persons claiming the same, that this court will on the 24th day of March, inst. (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

S H. HARLOW,
U. S. Marshal.

Dated March 24, 1875.

(Endorsed :) Process in rem. Filed March 24, 1875.

EASTERN DISTRICT OF NEW YORK, *ss :*

The President of the United States of America to the marshal of the eastern district of New York, greeting :

Whereas a libel hath been filed in the district court of the United States for the eastern district of New York, on the 4th day of March, in the year of our Lord one thousand eight hundred and seventy-five, by William H. Mount, Adam Patridge, Gordon D. White, Arion B. Longstreet, Dennis Yow, Adam B. Jackson, Simon Patridge, and Justice Nelson vs. The steamship Benefactor, her engines, tackle, apparel, &c., in a cause of collision ; amount claimed $103.698.

For the reasons and causes in the said bill mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamship or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had that the said steamship or vessel, her tackle, &c., may, for the causes in said libel mentioned, be condemned and sold to pay the demands of the libellants:

You are therefore hereby commanded to attach the said steamship or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the eastern district of New York, on the 24th day of March, 1875, at twelve o'clock noon of the same day, if the same

12 shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make returns thereof, together with this writ.

Witness the honorable Charles L. Benedict, judge of said court, at the city of Brooklyn, in the eastern district of New York, this 4th day of March, in the year of our Lord one thousand eight hundred and seventy-five, and of our Independence the ninety-ninth.

B. LINCOLN BENEDICT, *Clerk.*

BEEBE, WILCOX & HOBBS,
Proctors for Libellant.

In obedience to the within monition, I attached the steamship Benefactor, &c., therein described, on the 9th of March, 1875, and have not given due notice to all persons claiming the same that this court will, on the 24th day of March inst. (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

S. R. HARLOW,
U. S. Marshal.

Dated March 24, 1875.

(Endorsed:) Process in rem. Filed March 24, 1875.

13 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court rooms, in the city of Brooklyn, on the 22d day of March, in the year of our Lord one thousand eight hundred and seventy-five.

Present, the honorable Charles L. Benedict, district judge.

THE STEAMSHIP BENEFACTOR, HER ENGINE, &c.,
ads.
WILLIAM HIRST AND OTHERS.

And now, Thomas Clyde, intervening as president, for the interest of the New York and Wilmington Steamship Company in the said steamship, appears before the honorable court, and makes claim to the said steamship, &c., as the same are attached by the marshal, under process of this court, at the instance of William Hirst and others; and the said Thomas Clyde avers that the company was in possession of the said steamship at the time of the attachment thereof, and that it is the true and bona fide owner of the said steamship, and that no other person is the owner thereof; and the said Thomas Clyde the true and lawful bailee thereof, as president; wherefore it prays to defend accordingly.

THE NEW YORK AND WILMINGTON STEAMSHIP COMPANY,
THOMAS CLYDE,
President.

OWEN & GRAY,
Proctors for Claimant.

14 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Thomas Clyde, being duly sworn, deposes and says that he resides in the city of Philadelphia; that he is the president of the company above named; that the owner of said steamship is a corporation

created by and existing under the laws of the State of , and that this deponent is duly authorized to put in this claim in behalf of the owner of the said steamship; and that the said claim is true of the knowledge of this deponent, except as to the matters stated on information and belief, and as to such matters he believes it to be true.

THOMAS CLYDE.

Sworn to and subscribed this 22d day of March, A. D. 1875, before me.

EDWARD L. OWEN,
U. S. Commissioner.

(Endorsed:) Claim of corporation. Filed the twenty-third day of March, 1875.

15 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court rooms, in the city of Brooklyn, on the 22d day of March, in the year of our Lord one thousand eight hundred and seventy-five.

Present, the honorable Charles L. Benedict, district judge.

THE STEAMSHIP BENEFACTOR, HER ENGINE, &c., *ads.* WILLIAM H. MOUNT AND OTHERS.

And now, Thomas Clyde, intervening as president for the interest of The New York and Wilmington Steamship Company in the said steamship, appears before the honorable court and makes claim to the said steamship, &c., as the same are attached by the marshal, under process of this court, at the instance of William H. Mount and others, and the said Thomas Clyde avers that the company was in possession of the said steamship at the time of the attachment thereof, and that it is the true and bona fide owner of the said steamship, and that no other person is the owner thereof, and the said Thomas Clyde the true and lawful bailee thereof, as president; wherefore, it prays to defend accordingly.

THE NEW YORK AND WILMINGTON STEAMSHIP COMPANY,
THOMAS CLYDE,
President.

OWEN & GRAY,
Proctors for Claimants.

16 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Thomas Clyde, being duly sworn, deposes and says that he resides in the city of Philadelphia; that he is the president of the company above named; that the owner of said steamship is a corporation, created by and existing under the laws of the State of , and that this deponent is duly authorized to put in this claim in behalf of the owner of the said steamship; and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

THOMAS CLYDE.

Sworn to and subscribed this 22d day of March, A. D. 1875, before me.

EDWARD L. OWEN,
U. S. Commissioner.

(Endorsed:) Claim of corporation. Filed the twenty-third day of March, 1875.

Stipulation entered into pursuant to the rules and practice of this court.—Filed the 23d day of March, 1875.

District court of the United States for the eastern district of New York.

Whereas a libel was filed in this court on the fourth day of March, in the year of our Lord one thousand eight hundred and seventy-five, by William Hirst and others, against the steamship Benefactor, her engine, &c., for the reasons and causes in the said libel mentioned, and praying that said steamship may be condemned and sold to pay the demands of the libellants, and the parties hereto hereby consenting that in case of default or contumacy on the part of the claimant or its
17 sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands;

And whereas, also, a claim has been filed in said cause by The New York and Wilmington Steamship Company:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against it by the final decree of this court, or, upon an appeal, by the appellate court.

THE NEW YORK AND WILMINGTON STEAMSHIP COMPANY,
By THOMAS CLYDE,
President.
ANDREW BOARDMAN.
FRED. BUTTERFIELD.

Taken and acknowledged this 22d day of March, 1875, before me.
EDWARD L. OWEN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Andrew Boardman and Frederick Butterfield, parties to the above stipulation, being duly sworn, doth depose and say, and each for himself says, that he resides in the city of New York; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

ANDREW BOARDMAN.
FRED. BUTTERFIELD.

Sworn to this 22d day of March, 1875, before me.
EDWARD L. OWEN,
U. S. Commissioner.

18 Recorded the 5th day of April, 1875.
B. L. BENEDICT, *Clerk.*

Stipulation entered into pursuant to the rules and practice of this court.—Filed the 23d day of March, 1875.

District court of the United States for the eastern district of New York.

Whereas a libel was filed in this court on the fourth day of March, in the year of our Lord one thousand eight hundred and seventy-five, by William H. Mount and others, against The Steamship Benefactor, her

engine, &c., for the reasons and causes in the said libel mentioned, and praying that said steamship may be condemned and sold to pay the demands of the libellants, and the parties hereto hereby consenting that in case of default or contumacy on the part of the complainant or its sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands;

And whereas, also, a claim has been filed in said cause by The New York and Wilmington Steamship Company:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby bound in the sum of two hundred and fifty dollars, conditioned that the claimant above named shall pay all
19 costs and expenses which shall be awarded against it by the final decree of this court, or upon an appeal by the appellate court.

THE NEW YORK AND WILMINGTON STEAMSHIP COMPANY,
By THOMAS CLYDE, *President.*
ANDREW BOARDMAN.
FRED. BUTTERFIELD.

EDWARD L. OWEN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Andrew Boardman and Fred. Butterfield, parties to the above stipulation, being duly sworn, doth depose and say, and each for himself says, that he resides in the city of New York; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

ANDREW BOARDMAN.
FRED. BUTTERFIELD.

Sworn to this 22d day of March, 1875, before me.

EDWARD L. OWEN,
U. S. Commissioner.

Recorded 3d day of April, 1875.

B. L. BENEDICT, *Clerk.*

20 At a stated term of the district court of the United States, within and for the eastern district of New York, held at the United States court-rooms in the city of Brooklyn, on Saturday, the 20th day of March, 1875.

Present, Hon. Charles L. Benedict, district judge.

THE STEAMSHIP BENEFACTOR, HER ENGINE, &c.,
ads.
WILLIAM H. MOUNT ET ALS.

THE SAME
ads.
WILLIAM HIRST ET ALS.

The motion for the appointment of an appraiser to appraise the value of the steamship Benefactor, her engine, &c., coming on to be heard, after hearing Owen & Gray in support of said motion, and F. A. Wilcox, esq., in opposition thereto, and after reading and filing the affidavit of F. A. Wilcox, esq., it is ordered that N. L. McCready and Thomas W.

Wilson be and they are hereby appointed appraisers to appraise the value of the steamship Benefactor, her engine, &c.

It is further ordered that upon the filing of the appraiser's report, the claimants be, and they hereby are, permitted to fill a stipulation with sufficient sureties, according to the course and practice of
21 this court, in the amount of the appraised value of said steamship, and that such stipulation be for the benefit of the libellants in the above-entitled action (in case they shall establish the liability of said steamship), and of all persons and parties who may, by due proceedings in this court, show themselves entitled to liens upon said steamship, by reason of the collision in the libel mentioned.

It is further ordered that upon the claimants entering into and filing such stipulation, said steamship, her engine, boiler, tackler, apparel and furniture be discharged from all liability for losses and damages to all the parties for whose benefit the stipulation is given.

And it is further ordered that the libellants in each of the above entitled actions, and all persons and parties having liens upon said steamship, her engine, &c., for loss and damage by reason of the collision aforesaid, be, and they hereby are declared to be, bound by this order.

CHAS. L. BENEDICT.

(Endorsed:) Order appointing appraisers. Filed March 22, 1875.

22 United States district court, eastern district of New York. In admiralty.

THE STEAMSHIP BENEFACTOR, HER ENGINE, &c., *ads.* WILLIAM H. MOUNT AND OTHERS.

THE SAME *ads.* WILLIAM HIRST AND OTHERS.

The undersigned having been appointed appraisers to appraise the value of the steamship "Benefactor," her engines, &c., do solemnly swear that we will faithfully appraise the same to the best of our skill and ability.

N. L. McCREADY.
THOMAS W. WILSON.

Subscribed and sworn to, this 20th day of March, 1875, before me.

EDWARD L. OWEN,
U. S. Commissioner.

(Endorsed:) Appraiser's oath. Filed March 20th, 1875.

23 United States district court, eastern district of New York. In admiralty.

THE STEAMSHIP BENEFACTOR, HER ENGINES, &c., *ads.* WILLIAM H. MOUNT AND OTHERS.

THE SAME *ads.* WILLIAM HIRST AND OTHERS.

The undersigned having been duly appointed and sworn as appraisers

to appraise the value of the steamship Benefactor, her engines, &c., do report that we have examined and appraised said steamship Benefactor, her engines, &c., and do find that she is worth the sum of forty thousand dollars, U. S. currency, and no more.

Dated New York, March 22d, 1875.

All which is respectfully submitted.

N. L. McCREADY.
THOS. W. WILSON.

(Endorsed:) Appraisers' report. Filed March 22d, 1875.

24 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court rooms, in the city of Brooklyn, on the 22d day of March, in the year of our Lord one thousand eight hundred and seventy-five.

Present, the honorable Charles L. Benedict, district judge.

THE STEAMSHIP BENEFACTOR, HER ENGINES, &c.,
ads.
WILLIAM H. MOUNT.

THE SAME
ads.
WILLIAM HIRST ET ALS.

The order to show cause why the report of the appraisers made herein on 22d instant should not be confirmed, coming on to be heard;

After hearing Owen & Gray, proctors for claimants, in support of such confirmation, and Beebe, Wilcox & Hobbs in opposition thereto, it is ordered that said report be, and the same hereby is, in all things confirmed.

And it is further ordered that the claimants be permitted to execute stipulation in such appraised value in conformity with the order heretofore entered on the 22d of March, and that upon so doing, said steamship be discharged from the custody of the marshal.

Entered.

C. L. B.

25 (Endorsed:) Order confirming report of appraisers. Filed March 22d, 1875.

Stipulation for value.

Whereas a libel was filed on the 4th day of March, 1875, by William H. Mount and others, against the steamship Benefactor, her engines, &c., for the reasons and causes in said libel mentioned;

And whereas, on the said 4th day of March, 1875, another libel was filed by William Hirst and others, against said steamship Benefactor, her engine, &c., for the reasons and causes in said libel mentioned;

And whereas the said steamship Benefactor, her engine, &c., is in the custody of the marshal of this district under the process issued in pursuance with the prayers of said libels respectively;

And whereas an order was made and entered in this cause on the 20th day of March, 1875, whereby it was ordered that the New York and Wilmington Steamship Company have leave to give a stipulation with sufficient sureties in the appraised value of said steamship, and

that such stipulation be for the benefit of the libellants herein (in case they shall establish the liability of said steamship), and of all persons and parties who might, by due proceedings in this court, show themselves entitled to liens upon said steamship by reason of the collision in the libels mentioned; and that upon the entering into and filing of such stipulation, the said steamship, her engine, boiler, tackle, apparel, and furniture should be discharged from all liabilities for losses and damages occasioned to all the parties for whose benefit the said stipulation should be given, and in and by which said order it was further ordered that the said libellants, and all other persons or parties having liens on
26 the said steamship, her engine, boiler, tackle, apparel, and furniture for loss or damage by reason of the collision, should be, and they were declared to be bound by said order, as by reference to the said order now on file in the office of the clerk of this court will more fully appear;

And whereas the value of said steamship has been ascertained, by appraisers appointed by order of this court, to be the sum of forty thousand dollars, as appears by their said report now on file in the office of the clerk of this court, which said report has been confirmed;

And whereas the undersigned, the New York and Wilmington Steamship Company, above named, have filed a claim to said steamship, her engine, &c., as sole owners thereof in each of the actions already commenced in this court, and as such claimants and owners, with their sureties thereto, have applied to the court for leave to give this stipulation and to have the same stand in place of the said steamship, her engine, &c., to be enforced in such way as the court may order and direct, for the benefit of all parties who have already filed or may hereafter file libels in this court against the said steamship, her engine, &c., to establish or enforce any lien or claim upon or against her arising out of the collision set forth in the aforesaid libels;

And the undersigned, the parties hereto, hereby consenting and agreeing that the said claimants and owners, the New York and Wilmington Steamship Company, parties hereto, in all cases in which libels may hereafter be filed in this court against the said steamship, her engine, &c., to enforce liens or claims upon or against said steamship, her engine, &c., by reason of said collision set forth in the aforesaid libels, upon notice thereof to them, or to Owen & Gray, esq's, their proctors, or to such other proctors as may be substituted in their stead, to be given by publication or otherwise, as the court may direct, will, within the time limited by the court, enter an appearance in such
27 causes without service of process, which is hereby waived; and that in default of such appearance such proceedings may be had and such decree made in such causes respectively as to the court may seem proper, and with the like effect as if said owners and claimants and their sureties, the parties hereto, had appeared and consented thereto; and the parties hereby further consenting and agreeing that they will, to the extent of the amount of this stipulation, abide by and perform all orders and decrees of this court made or to be made in any proceeding taken or to be taken in this court or in any appellate court to secure the payment of any lien upon the said steamship, her engine, boiler, tackle, apparel, and furniture, in place of which this stipulation is substituted, which may have arisen by reason of the collision set forth in the aforesaid libels, and that in default or contumacy on the part of the said owner or claimant or their sureties, execution or executions, not in all to exceed the amount of this stipulation for the value of said steam-

ship, to wit, forty thousand dollars, with interest from this date, may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such that if the stipulators undersigned shall, upon final order or decree of the said district court, made and entered in the above suits or in any suit or proceeding commenced, or which may hereafter be commenced in said court to establish and enforce any lien or claim upon the said steamship, her engine, &c., by reason of the collision set forth in the aforesaid libels or upon the final decree of any appellate court to which any or either of such suits or proceedings may be carried, and upon notice of such order or decree to the parties hereto or either of them, or to Owen & Gray, proctors for the claimants of said steamship, or to such proctors as may be substituted in their stead herein, abide by all interlocutory orders and decrees of the court, and pay the money awarded to the respective parties in and by all such final decrees rendered by this court or the appellate court (if any appeal intervene), not exceeding in the aggregate the said sum of forty thousand dollars, with interest from this date, then this stipulation to be void, otherwise to remain in full force and virtue.

28

THE NEW YORK & WILMINGTON STEAMBOAT CO.,
By THOMAS CLYDE, *Pres.*

THOMAS CLYDE.
ANDREW BOARDMAN.
FRED. BUTTERFIELD.

Taken and acknowledged this 22d day of March, 1875.

EDWARD L. OWEN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Andrew Boardman, Thomas Clyde, and Frederick Butterfield, being duly sworn, depose and say, and each for himself says, that he is worth the sum of eighty thousand dollars over and above his debts and liabilities.

THOMAS CLYDE.
ANDREW BOARDMAN.
FRED. BUTTERFIELD.

Subscribed and sworn to before me March 22d, 1875.

EDWARD L. OWEN,
U. S. Commissioner.

The foregoing bond is hereby approved as to the sufficiency of the sureties therein named.

Dated March 22d, 1875.

BEEBE, WILCOX & HOBBS,
Libellant's Proctors.

(Endorsed:) Stipulation for value. Filed March 23d, 1875.

29 *Notice to the marshal.*

United States district court.

WM. H. MOUNT
vs.
THE STEAMSHIP BENEFACTOR.

WILLIAM HIRST AND AL.
vs.
THE SAME.

SIR: The above-mentioned steamship having been bonded, and the costs of the clerk and commissioner having been paid, you will discharge the said steamship Benefactor from your custody upon the payment of your fees and charges.

Dated March 23, 1875.

Yours, &c.,

B. LINCOLN BENEDICT, *Clerk.*

To S. R. HARLOW,
U. S. Marshal.

(Endorsed:) Notice to marshal. Filed March 23d, 1875.

To the Hon. Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

The New York and Wilmington Steamship Company, for answer to the libel and complaint of William Hirst, Charles Luken, Hugh McAdam, and John Collins, against the steamship Benefactor, her engines, &c., and against all persons lawfully intervening for their interest
30 therein, in a cause of collision, civil and maritime, alleges, and upon information and belief articulately propounds, as follows:

First. They admit that at the time of filing the libel herein, the steamship Benefactor was within the jurisdiction of this court.

Second. They have not any knowledge nor any information sufficient to form a belief as to the allegations of the second article of the libel, and they therefore deny the same.

Third. They deny the several allegations of the third article of the libel, except so far as the same are expressly admitted in or which are in conformity to the statement of the eighth article hereinafter stated.

Fourth. They have no knowledge of the several matters stated in the fourth article of the libel, and therefore deny the same.

Fifth. They have no knowledge of the several matters stated in the fifth article of the libel, and therefore deny the same.

Sixth. They deny the several allegations contained in the sixth article of the libel.

Seventh. They admit that the payment of the alleged loss has been refused, because as they aver the collision and loss was caused solely by the fault of the schooner Susan Wright.

Eighth. In respect to the collision these respondents, upon information and belief, admit and say, that a collision did occur between the schooner Susan Wright and the steamship Benefactor, after ten o'clock in the morning of the 26th of February, 1875, in the vicinity of what is commonly known as the Woodlands on the coast of New Jersey; that the schooner was bound for the port of New York, the weather
31 was fair, the wind from west to west-northwest, or thereabouts;

that the schooner had her five lower sails set except the bonnet on the jib, and was sailing at the rate of from seven to eight knots an hour; that she was heading by compass (before the change in her course as hereafter stated) from north to north by west, or thereabouts; that she had no lookout; that she had a licensed pilot who was in charge of her navigation; that the pilot and one man were at her wheel and the captain was standing around near by; that the mate was engaged forward in overhauling the starboard chain, one man was below helping him, and the other sailors were on the forecastle. The pilot, upon stooping down and looking under the mizzen boom, first saw the steamship coming down the coast, being then about half a mile distant, and bearing a little on the schooner's starboard bow; that the pilot then ordered the schooner's wheel to be ported so as to pass the steamship port to port, and he assisted the man at the wheel in putting the wheel to port; that by this movement the schooner's head fell off several points to the eastward, thereby bringing the steamer on her port bow, and if she had kept that course or steadied her wheel she would have passed the steamship with port to port, as the pilot had intended, at a proper and safe distance apart, without the least danger of a collision. But instead of doing so the master of the schooner, when somewhere within a quarter of a mile of the steamship, wrongfully and improperly took the navigation of the schooner out of the charge of the pilot, and thrusting him away, seized the wheel, and instantly hove it hard astarboard, and thereby brought the schooner's head to the wind, and athwart the steamship's course and under her bows. That the schooner came up so far to the wind before the collision that her sails shook, and that while in that position the steamship unavoidably struck the schooner on her starboard quarter somewhere about ten feet abaft the mizzen chains, and sunk her.

32 That the steamship, being of the burden of about 900 tons, left her dock at New York, at about six o'clock in the morning of the said 26th February, 1875, being in all respects seaworthy, tight, staunch, strong, well-fitted, officered, manned, and equipped, with a cargo consisting of general merchandise, bound on one of her regular trips to Wilmington, North Carolina.

That the said steamship proceeded along in safety and without any accident, and while running along down the coast under steam, and having all sails set, heading by compass somewhere from about south by west to south-southwest, and having a competent lookout properly stationed forward and faithfully attending to his duty, the schooner was discovered approaching, then about two miles distant, and bearing from one to two points on the port bow; that there was at that time plenty of room for the steamer to have kept out of the way, and if the schooner had kept her course the steamship could and would have done so, and have passed her at a proper distance with port to port, and in perfect safety. That as the schooner approached she was carefully watched by those navigating and having charge of the steamship, and when the schooner was about half a mile distant it was observed that she appeared to be keeping off, being, as was supposed, on a port helm; that thereupon the wheel of the steamship was ported, and her head came up so that she headed somewhere about southwest. That if both vessels had then kept their respective courses, which each had then taken, they would have passed each other with port to port at a safe and proper distance, and without the least danger of a collision. But the schooner did not keep the course she had thus elected to take; on the contrary, when she had approached within about a quarter of a mile from the steamship, she sud-

denly and unexpectedly, to those navigating the steamship, luffed up to the wind, and before the collision she had come up so far that
33 her sails shook, thus bringing her starboard side toward the steamship. That as soon as it was discovered that the schooner was so luffing, the wheel of the steamship was put hard to starboard as quickly as possible, the bells were rung to stop and back, the main sheet let go, and every effort made as quickly as possible which could have been to avoid a collision, but it was impossible to keep away from or to clear the schooner as she then was, and the steamship struck her, as already stated, on her starboard side about ten feet baft the mizzen chains, and sunk her. And these respondents deny each and every allegation of the libel in anywise to the contrary of what is alleged in this article.

Ninth. These respondents aver that the collision in question was not caused by any fault on the part of the steamship, but solely by the fault of those in charge of and navigating the said schooner, and they deny each and every allegation to the contrary.

Tenth. And these respondents further say that as soon after the collision as it was practicable the steamship put back and took the officers and crew on board and with them returned to the port of New York. That upon examination the said steamship was found to have a hole stove in her bow by the collision, and that she had sustained other damages. That to repair the damages which she had so sustained, including the loss of the use of the steamship in putting back to port, and while delayed in making such repairs, will cost a sum exceeding five thousand dollars, which these respondents claim to recover in this action, in case both vessels should be found to have been in fault, and a decree be entered apportioning the damages caused by the said collision.

Eleventh. That all and singular the premises herein contained
34 are true, in verification whereof, if denied, the respondents crave leave to refer to the depositions and other proofs to be by them exhibited in this cause.

Wherefore the respondents pray that this honorable court will pronounce against this libel aforesaid, and dismiss the same with costs.

NEW YORK AND WILMINGTON
STEAMSHIP COMPANY,
By THOMAS CLYDE,
President.

OWEN & GRAY,
Proctors for Claimants.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Thomas Clyde, being duly sworn, says that he is the president of the New York and Wilmington Steamship Company, the claimants above named; that he has read the foregoing answer and knows the contents thereof; and that the same is true, of his own knowledge, except as to the matters therein stated upon information and belief, and that as to those matters he believes it to be true.

THOMAS CLYDE.

Sworn to before me this 6th day of April, 1875.

EDWARD L. OWEN,
U. S. Commissioner.

(Endorsed:) Answer to libel of William Hirst et al. Filed April 6th, 1875.

35 To the honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

The New York and Wilmington Steamship Company, for answer to the libel and complaint of William H. Mount, Adam Patridge, Gordon D. White, Aaron B. Longstreet, Dennis How, Adam B. Jackson, Amasa Patridge, and Justus Nelson, against the Steamship Benefactor, her engine, &c., and against all persons lawfully intervening for their interest therein in a cause of collision, civil and maritime, alleges, and upon information and belief articulately propounds, as follows:

First. They admit that at the time of filing the libel herein the steamship Benefactor was within the jurisdiction of this court.

Second. They have not any knowledge nor any information sufficient to form a belief as to the allegations of the second article of the libel, and they therefore deny the same.

Third. They deny the several allegations of the third article of the libel, except in so far as the same are expressly admitted in, or which are in conformity to the statement in the seventh article hereinafter stated.

Fourth. They have no knowledge of the several matters stated in the fourth article of the libel, and therefore deny the same.

Fifth. They deny the several allegations contained in the fifth article of the libel.

Sixth. They admit that payment of the alleged loss has been refused, because, as they aver, the collision and loss was caused solely by the fault of the schooner Susan Wright.

Seventh. In respect to the collision these respondents, upon
36 information and belief, admit and say: That a collision did occur between the schooner Susan Wright and the steamship Benefactor, after ten o'clock in the morning of the 26th February, 1875, in the vicinity of what is commonly known as the Woodlands, on the coast of New Jersey. That the schooner was bound to the port of New York; the weather was fair; the wind from west to west-northwest, or thereabouts. That the schooner had her five lower sa'les set, except the bonnet on the jib, and was sailing at the rate of from seven to eight knots an hour. That she was heading, by the compass, (before the change in her course as hereafter stated), from north to north by west, or thereabouts. That she had no lookout. That she had a licensed pilot, who was in charge of her navigation. That the pilot and one man were at the wheel, and the captain was standing around near by. That the mate was engaged forward in overhauling the starboard chain; one man was below helping him, and the other sailors were on the forecastle. The pilot, upon stooping down and looking under the mizzen boom, first saw the steamship coming down the coast, being then about half a mile distant, and bearing a little on the schooner's starboard bow. That the pilot then ordered the schooner's wheel to be ported, so as to pass the steamship port to port, and he assisted the man at the wheel in putting the wheel to port. That by this movement the schooner's head fell off several points to the eastward, thereby bringing the steamer on her port bow; and if she had kept that course or steadied her wheel she would have passed the steamship with port to port, as the pilot had intended, at a proper and safe distance apart, without the least danger of a collision. But, instead of doing so, the master of the schooner, when somewhere within a quarter of a mile of the steamship, wrongfully and improperly took the navigation of the schooner out of the charge of the pilot, and thrusting him away, siezed the wheel and instantly hove

37 it hard astarboard, and thereby brought the schooner's head to the wind and athwart the steamship's course and under her bows. That the schooner came up so far to the wind before the collision that her sails shook, and that while in that position the steamship unavoidably struck the schooner on her starboard quarter, somewhere about ten feet abaft the mizzen chains, and sunk her.

That the steamship, being of the burden of about 900 tons, left her dock at New York at about six o'clock in the morning of the said 26th February, 1875, being in all respects seaworthy, tight, staunch, strong, well-fitted, officered, manned, and equipped, with a cargo consisting of general merchandise, bound on one of her regular trips to Wilmington, North Carolina.

That the said steamship proceeded along in safety without any accident, and while running along down the coast under steam, and having all sails set, heading by compass somewhere from about south by west to south-southwest, and having a competent lookout properly stationed forward and faithfully attending to his duty, the schooner was discovered approaching, being then about two miles distant, and bearing from one to two points on the port bow; that there was at that time plenty of room for the steamship to have kept out of her way, and if the schooner had kept her course the steamship could and would have done so, and have passed her at a proper distance with port to port and in perfect safety; that as the schooner approached she was carefully watched by those navigating and having charge of the steamship, and when the schooner was about half a mile distant, it was observed that she appeared to be keeping off, being, as was supposed, on a port helm; that thereupon the wheel of the steamship was ported, and her head came up so that she headed somewhere about southwest; that

38 if both vessels had then kept their respective courses which each had then taken, they would have passed each other with port to port at a safe and proper distance, and without the least danger of a collision. But the schooner did not keep the course she had thus elected to take; on the contrary, when she had approached to within about a quarter of a mile from the steamship, she suddenly and unexpectedly to those navigating the steamship luffed up to the wind, and before the collision she had come up so far that her sails shook, thus bringing her starboard side towards the steamship; that as soon as it was discovered that the schooner was so luffing, the wheel of the steamship was put hard to starboard as quickly as possible, the bells were rung to stop and back, the main sheet let go, and every effort made, as quickly as possible, which could have been, to avoid a collision, but it was impossible to keep away from or to clear the schooner as she then was, and the steamship struck her, as already stated, on her starboard side about ten feet baft the mizzen chains and sunk her. And these respondents deny each and every allegation of the libel in anywise to the contrary of what is alleged in this article.

Eighth. These respondents aver that the collision in question was not caused by any fault on the part of the steamship, but solely by the fault of those in charge of and navigating the said schooner, and they deny each and every allegation to the contrary.

Ninth. And these respondents further say that as soon after the collision as it was practicable the steamship put back and took the officers and crew on board, and with them returned to the port of New York; that upon examination the said steamship was found to have had a hole stove in her bow by the collision, and that she had sustained other damages by the collision; that to repair the damages which she had

39 so sustained, including the loss of the use of the steamship in putting back to port, and while delayed in making such repairs, will cost a sum exceeding five thousand dollars, which these respondents claim to recover in this action, in case both vessels should be found to have been in fault, and a decree be entered apportioning the damages caused by the said collision.

Tenth. That all and singular the premises herein contained are true, in verification whereof, if denied, the respondents crave leave to refer to the depositions and other proofs to be by them exhibited in this cause.

Wherefore the respondents pray that this honorable court will pronounce against the libel aforesaid, and dismiss the same with costs.

NEW YORK AND WILMINGTON STEAMSHIP COMPANY,
By THOMAS CLYDE,
President.

OWEN & GRAY,
Proctors for Claimants.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Thomas Clyde, being duly sworn, says that he is the president of the New York and Wilmington Steamship Company, the claimants above named; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and that as to those matters he believes it to be true.

THOMAS CLYDE.

Sworn to before me this 6th day of April, 1875.
EDWARD L. OWEN,
U. S. Commissioner.

(Endorsed:) Answer to libel of William Mount et. al. Filed April 6th, 1875.

40 To the honorable Charles L. Benedict, district judge of the United States for the eastern district of New York:

The petition of the Sun Mutual Insurance Company and the Union Mutual Insurance Company respectfully represents:

First. That your petitioners, at all the times hereinafter mentioned, were and now are respectively corporations created and organized under the laws of the State of New York, and engaged in the business of marine insurance and other business appertaining thereto, in the city of New York.

Second. That heretofore, and on or about the 17th day of February, 1875, the schooner Susan Wright set sail from Mantanzas, in the island of Cuba, bound for the city of New York, and having on board, to be transported from Mantanzas aforesaid to said city of New York certain four hundred and sixty-two hogsheads of sugar, and certain other two hundred boxes of sugar, which were consigned by invoice and bill of lading to certain persons doing business in said city of New York, under the name and style of Moses Taylor & Co., or to their assigns; that said sugar was, on or about said 17th day of February, 1875, insured against the perils of the sea, collisions, and divers other risks and perils upon the voyage aforesaid, for and on account of the owners thereof, by your petitioners, in equal shares or proportions, by their two certain policies of insurance and certain endorsements thereon, issued by them respectively to said Moses Taylor & Co., for whom it might concern, which pol-

icies and endorsements your petitioners pray leave to produce to the court on the trial of the cause hereinafter mentioned, and that the said insurances upon such sugar remained and were in force down to and at the time of the collision hereinafter mentioned.

41 Third. That on or about the 26th day of February, 1875, at about a quarter past ten o'clock in the forenoon of that day, and when about opposite and two or three miles distant from Squan, in New Jersey, the said schooner having said cargo on board was run into, and with her said cargo was sunk by the steamship Benefactor, and by reason thereof the said cargo so insured by your petitioners as aforesaid, which was then and there of the value of forty thousand dollars, became and was a total loss.

Fourth. That thereupon the owners of the said cargo so insured as aforesaid by their agents, duly authorized on that behalf, abandoned the same to your petitioners as underwriters thereon, and assigned and transferred the same, and all claims and demands for the loss thereof, or damage or injury thereto, to your petitioners in proportion to their said several insurances thereon, that is to say, in equal shares and proportions, and the said persons doing business under the name and style of Moses Taylor & Co., by endorsement on the said bill of lading assigned and set over the same to your petitioners, which abandonment and assignment were duly accepted by your petitioners, who thereupon paid to the owners of the said cargo a total loss thereon under the said policies of insurance, and that your petitioners thereupon became and have ever since been and now are subrogated to all the rights of the said insured, in and to the said cargo, and to all the claims and demands of said insured for loss thereof, or for damage or injury thereto.

Fifth. That there is now pending in this honorable court a suit brought by William H. Mount and others against the said steamship Benefactor, her engines, &c., to recover the damages occasioned by the collision between the said schooner Susan Wright and said steamship Benefactor, above referred to; that the New York and Wilming-

42 ton Steamship Company have intervened as claimants of the said steamship, and have filed the usual stipulations for costs and value in this court.

Sixth. And your petitioners further show, as they are informed by the owners of said schooner and verily believe, that the said collision was occasioned by the negligence, want of skill and improper conduct of those navigating the said steamship Benefactor and having control thereof, and not by or through any fault or negligence or improper conduct on the part of the persons navigating and having control of the said schooner, and as is more fully alleged and set forth in the libel on file in the said pending suit, to which libel and the allegations therein contained your petitioners pray leave to refer.

Wherefore your petitioners pray that, in accordance with the rules and practice of this honorable court, they may be admitted to be heard for their interests in the res, now within the control of the court, in the above mentioned cause, and represented by the said stipulations on behalf of the claimants therein, and that they may be allowed to prosecute as co-libellants in the said suit, and to share the benefit of the said stipulations, and that they may have such further and other relief herein as may be proper.

THE SUN MUTUAL INS. CO.,
By J. P. PAULISON, *Pres't.*

THE UNION MUTUAL INS. CO.,
By F. L. LATHROP, *Pres't.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

JOHN P. PAULISON and FRANCIS L. LATHROP, being severally duly sworn, do depose and say that they are the presidents of the Sun Mutual Insurance Company and the Union Mutual Insurance Company respectively; that they have read the foregoing petition and seen the contents thereof, and the same is true to their own knowledge, except as
43 to the matters therein stated upon information and belief, and as to those matters they believe the same to be true.

J. P. PAULISON.
F. L. LATHROP.

Sworn to before me this 17th day of April, 1875.

EDWARD L. OWEN,
U. S. Commissioner.

(Endorsed:) Petition to intervene. Filed April 20th, 1875.

At a stated term of the district court of the United States for the eastern district of New York, held at the United States court rooms, in the city of Brooklyn, on this 17th day of April, 1875.

Present, Hon. Chas. L. Benedict, district judge.

WILLIAM H. MOUNT ET AL.
vs.
THE STEAMSHIP BENEFACTOR, HER ENGINES, tackle, &c.

Upon reading and filing the petition of the Sun Mutual Insurance Company and the Union Mutual Insurance Company, sworn to on the 17th day of April, 1875, and the annexed consent of Beebe, Wilcox and
44 Hobbs, proctors for the libellants, and Owen and Gray, proctors for the claimants in the above-entitled cause, and upon motion of Evarts, Southmayd and Choate, proctors for said petitioners,

Ordered, that the said petitioners be, and they are hereby, admitted to be heard for their own respective interests on the res now within the control of the court in said suit, and represented by the stipulations for costs and value heretofore entered into by the claimants and their sureties herein, and that the said petitioners may be and are hereby allowed to prosecute as co-libellants in this suit, and to share the benefit of the said stipulation.

And it is further ordered, that the said claims and demands of said petition ers be deemed to be put in issue by the answer of the claimants now on file in this suit, and that said petitioners be and they are hereby allowed to introduce evidence in support of their respective claims and demands for loss of, or damage, or injury to the cargo referred to in their said petition, and that they be heard for their respective interests herein, at the trial of this suit, and upon such other proceedings as may be had or taken therein.

And it is further ordered that the evidence heretofore taken in said suit stand as evidence therein between the said petitioners and the other parties to the said suit, with the like effect as if said petitioners had been parties to such suit at the time of the taking of such evidence.

CHAS. L. BENEDICT.

(Endorsed:) Order on petition to intervene. Filed April 20th, 1875.

FEB. 18TH, 1876.

Before Hon. C. L. Benedict, J.
Causes called.

45 Appearances: Franklin A. Wilcox, for libellants. Charles Tweed, for the Sun Mutual Insurance Co., and the Union Mutual Insurance Co., co-libellants. R. D. Benedict, counsel. Owens & Gray, for claimants of Benefactor.

Pleadings read.

EVIDENCE FOR LIBELLANTS.

WALTER H. MORTON, being sworn, testified as follows:

Q. Where do you reside?

A. I reside now at Asbury Park, N. J.; in 1875, I lived south of Ocean Grove Beach, N. J.

Q. What is your age?

A. 52.

Q. What is your occupation?

A. Carpenter.

Q. Did you see the schooner Susan E. Wright—or, by the way, what kind of a carpenter are you?

A. House carpenter.

Q. Did you ever see the schooner Susan E. Wright?

A. Yes, sir.

Q. How long have you known that schooner?

A. Well, I think it is in the neighborhood of three years since I saw her first; probably not quite so long; I don't remember.

Q. Have you seen her often since that time?

A. I have seen her some few times; not very often.

Q. Did you see the collision between her and the steamer Benefactor at any time?

A. I seen a collision between a three-masted schooner and a steamer on the 26th of February, 1875.

Q. Will you please state where you were at that time?

46 A. At the time of the collision I was on the beach south of Shark River; I think about two miles south of Shark River; probably not quite so much; I was walking up the beach at the time.

Q. Please speak up pretty loud.

A. I met a couple of my neighbors on the beach, and I says to them, says I, "That schooner has just about all that she can carry." I noticed at that time that she was about taking in her foretopsail, and then the schooner was about abreast of me, or very near it, and one of the men that I spoke to (there were two of them that I met along the beach—they were going south), one of them says——

(Objected to.)

Q. What did you say?

A. One of them said it was Captain Mount's schooner, and I asked him how he knew.

(Objected to; excluded.)

Q. Did you examine her sufficiently to ascertain whether it was Captain Mount's schooner?

A. I looked at her to determine, or see whether I could determine whether it was or not, and while I was in the act of looking at her, I noticed a steamer coming down the beach; they may probably have been half a mile apart when I first noticed the steamer; I was so intent looking at the schooner that I didn't notice the steamer until they got probably half a mile apart. Then I kept watching them both, because I thought they was just about on a line to strike, if one or the other didn't alter their course; and as they neared each other, I saw their bows lap on,

and I made up my mind they were going to pass; but as the bow of the steamer slid off the schooner's mizzen, I saw her stern swing around that way, and I saw that the starboard quarter davit appeared to drop down; I couldn't see that first; when the bow of the steamer first came
47 aloft of the mizzen, I saw the mizzen boom, or the mizzen sail fly up and all go into pieces. Then the starboard davit dropped down, and I saw that the schooner's starboard quarter was bursted open, or at least was injured so that she must certainly (I thought she must certainly) go down, and I don't think it was five minutes from that time until her deck was under water.

Q. From the time you saw the steamer and the schooner, did either vessel change her course up to the time of the collision?

A. I can't say that they did. I am satisfied that the schooner didn't, because I was watching her, and I noticed that she was hauled as close to the wind as she could be hauled.

Q. On what tack was she?

A. She was bearing in shore. When I first saw her, she was considerably further to sea than she was at the time of the collision. The wind was about—well, a little to the north of west at the time, and she was sailing her course just as near to the wind as she could, and appeared to be bearing in the land—trying to get under shelter of the land.

Q. Could you tell about how fast the steamer was running?

A. I could not. I am not much acquainted with the speed of vessels, but I should think from the distance that she ran after the collision, before I turned around to see where she was, that she must have been going at the rate of ten knots an hour, or very near it; may be faster than that—I cannot tell.

Q. How fast was the schooner going?

A. Probable 8 or 9 miles.

Q. (By the COURT.) How was the schooner sailing by compass?

A. I should say she was sailing northwest; may be a little to the north of that. I am not enough acquainted with seafaring life to determine.

Q. About the course of the steamer, can you tell?

48 A. She appeared to be holding her course down the coast. I don't know the course of the coast; but from the time I saw her, all the time, she appeared to be holding her course just about the same.

Q. Did you see any diminution in the speed of the steamer up to the time of the collision?

A. No, sir; I didn't.

Q. You saw the steamer when she passed on?

A. I saw the steamer as she passed the schooner, but I was looking so intently at the schooner, to see whether the men got saved, seeing her go down so quick, that I didn't pay any attention to the steamer until the schooner was sunk. Then I turned around, supposing the steamer would turn and come to their assistance, because there was no vessel in reach of them yet; when I turned around to look at the steamer to see where she was, she was in the neighborhood of two miles south—that is, south of the schooner. Then, shortly after I looked around, she turned around and came back; but before she got there, there was a pilot boat came to their assistance, and had taken them out of the rigging.

Q. How fast did she seem to be running after she passed the schooner?

A. I couldn't say, because I didn't notice it; I didn't see that she checked her speed at all, while I did see her, after she passed the schooner, but kept right on.

Q. How long was it after the collision before she came up to where the collision took place?

A. I hardly dare say, because it might have been longer than what it seemed to me; it appeared to me the schooner went down very quick. I should think, from the time of the collision till the time that the steamer turned around, probably was 15 minutes—probably a little longer; may be 20 minutes.

Q. Did you think the schooner went down in five minutes?

49 A. I think her decks were under in five minutes; I don't think it was more than ten or twelve minutes, at the outside, from the time of the collision till she was standing on the bottom; I noticed she went down so fast that one man that I could see distinctly, I could only see his head and shoulders above the water as he stood in the rigging.

Cross-examination:

Q. Have you ever followed the sea?

A. I have been a few trips on the sea; not enough to get acquainted with a vessel much, nor with the sea.

Q. You don't profess to be a sea-faring man?

A. No, sir.

Q. In what direction from you did the collision occur—about abreast of you, off to sea?

A. No, sir; I should think not—not from a northeast course; may be not exactly that point, but not far from it; the schooner, I judge, was about a mile; where she sunk was about three-quarters of a mile up the beach from where I stood at the time of the collision.

Q. How far off shore, do you think?

A. I am not well enough acquainted with the sea to determine that.

Q. Do you recollect the course of the shore—the train of it along there; that is, the course of it?

A. I think I have heard people say that it ran a little to the eastward of north there; I am not certain about the course there.

Q. Did the steamer turn around before she got abreast of you?

A. No, sir; she was a mile and a quarter or a mile and a half south of me before she turned around at all; I should think she was at least two miles south of the schooner when I looked around, and when she turned around.

Q. What sails did you say the schooner was taking in at the time you saw her?

50 A. Taking in her foretopsail at the time I met these two neighbors, and we were talking about it; she was about clewing up her foretopsail, and that left, I think, five sails; probably the jib might not have been full; I don't know.

Q. How long was that before the actual collision?

A. It might have been fifteen minutes, may be.

Q. How far did the vessels appear to be apart from each other, at that time, to your eye?

A. About half a mile, probably not so far; it is very deceiving, distance on the water, and I am not enough acquainted to know.

Q. And how did you suppose those vessels were heading, in respect to each other, when you first saw them—when you first saw the steamer?

A. I thought that the schooner was heading in ashore.

Q. That is, crossing the line of direction of the steamer?

A. Between me and the steamer, as I was on the beach; they were off shore; she was between me and the steamer, and appeared to be heading in shore.

Q. (By the COURT.) Between you and the course of the steamer?

A. Yes, sir.

Q. (By the same.) But the steamer was further to the northward than the schooner, a half a mile?

A. Yes, sir.

Q. Could you see an opening between the bow of the schooner and the bow of the steamer?

A. Yes, sir; when I first discovered the steamer coming down I could see an opening—an opening like as far as from here to that door (about 25 or 30 feet); it was a very small opening when I first noticed the steamer coming down.

Q. From that time your attention was directed to the steamer, was it, or to the schooner?

A. Well, I was looking at them both,h ow nice they came along, and in a minute or so they closed up the space between them, and I thought for certain they must collide, unless one or the other altered her
51 course; and for that reason I was looking right at them, and could see them both at the same time.

Q. What speed did you think the schooner was making at that time?

A. I thought the schooner was probably making 8 miles an hour; I am not versed enough with such things to know; she may have been going faster, and probably not quite so fast.

Redirect:

Q. You spoke of seeing them taking in the foretopsail of the schooner?

A. Yes, sir.

Q. And the time that elapsed until the collision you said was about 15 minutes?

A. I think it was in the neighborhood of 15 minutes.

Q. So that after they finished taking in the foretopsail, it was 15 minutes?

A. I should think it was fifteen minutes from the time they finished taking in the foretopsail until the time of the collision; I and my neighbors were talking at the time, and that was what made me make the remark; I saw they were taking in the foretopsails; then the schooner was not quite abreast of us; it may have been twenty minutes from the time of taking in the foretopsail until the collision; she was not quite abreast of us.

Recross:

Q. Which vessel did you see first?

A. The schooner.

Q. When you first saw her she was about abreast of you, or how about; do you recollect?

A. A little to the south of me when I first saw her.

CLAKK NEWMAN, being sworn for libellants, testified as follows:

Q. Where do you reside?

52 A. Near Ashbury Park, New Jersey; Ocean Grove, the neighborhood is known commonly as.

Q. What is your age?

A. 55, the twenty-third of last month.

Q. What is your occupation?

A. I was born a farmer; brought up to that.

Q. Followed that mostly?

A. Not always; for the last nine or ten years I have followed fishing alongshore; seine and net fishing alongshore.

Q. You have some familiarity with vessels?

A. Yes, sir.

Q. In the vicinity where you now reside?

A. Yes, sir; I have fished all along where this collision occurred; it was where I now reside.

Q. Do you know the schooner Susan E. Wright?

A. Not by sight; only by reputation; I don't know one vessel from another by their looks; not familiar enough with that.

Q. Did you see a collision between a schooner and a steamer?

A. Yes, sir.

Q. At any time?

A. On the 26th of February last, 1875.

Q. '74 or '75?

A. '75; last February, '75.

Q. Where were you standing?

A. I was about 400 yards to the south of Shark River, on what is now known as Ocean Beach.

Q. Which vessel did you see first?

A. I see the schooner first.

Q. In what direction by the compass did you look to see the schooner at that time?

A. The schooner was looking very nearly to me, so I could just see it was a three-masted schooner heading towards me, within a quarter of a mile of Shark's River.

Q. So you looked her right in the face?

A. Yes, sir, almost; she was a little to the north of looking at me; she was about describing a tack, as we call it, off to Shark's River; she had been ranging so as to make north-northeast.

Q. Did you notice her sails?

53 A. She had full foresail, mainsail, spanker, and two jibs; no topsails set when I saw her; there may have a bonnet.

Q. And about how fast was she sailing?

A. I couldn't judge only by how the wind blowed; with that set of sails she would sail about eight knots an hour—any good sailer would; it was blowing hard.

Q. And about on what course was she, if you can tell, by the compass?

A. I can't tell by the mariner's compass; she was one-fifth of the quarter of the circle from northwest to north; if it was a surveyor's compass, I could tell more about it; it was about one-fifth of that half quarter of a circle.

Q. How was your attention directed to this schooner?

A. I was riding along in wagon with my brother-in-law, and he stopped and says there is a three-masted schooner, and I shouldn't wonder if it is Captain Bill Mount's; we knowed Captain Mount, but I didn't know what kind of a schooner he sailed; and from that on I noticed it.

Q. When did you first notice the steamer?

A. A very few minutes afterwards the steamer came down past Shark River Inlet; where we were on the landing, or about 300 feet from the water, was a driving road and the sand hills, which are high to the north, and when she got up past them she brought herself right in our sight.

Q. The sand hills are to the north of Shark River?

A. Yes, sir; and we couldn't see a vessel till they got close to us.

Q. (By the COURT.) How far away from you was she when she came out from behind the hills?

A. Not over a quarter of a mile north of us.

Q. (By the same.) Did you see her when she came out from behind the hills?

A. No, sir.

Q. How far were the vessels apart when you first noticed the steamer?

54 A. Some distance apart when I first noticed her; a mile and a half, or perhaps further; I cannot judge exactly on the matter.

Q. About what was the course of the steamer?

A. The steamer was a holding her course to the beach; I don't know what it is by the mariner's compass, but I know what it is on land by a land surveyor's; the beach there runs south twenty-one and a half degrees west, surveyor's compass—I don't know what the sailors call it—or north 21½ degrees east going up the beach.

Q. Did you continue to see both vessels from that time up to the time of the collision?

A. Not every moment of the time. I looked more especially at the schooner. I didn't notice the steamer so much. When they drew very close together, then I noticed them both.

Q. Did that schooner change her course from the time you first saw her up to the time of the collision?

A. No, sir; she appeared to be holding the wind as close as she could.

Q. Were you in a position where you could tell?

A. Yes, sir; looking right at her.

Q. How did her masts range?

A. Just so you could see between them—just see to count the masts.

Q. Did you observe any change in the course or direction of the steamer?

A. No, sir; none whatever.

Q. So that both vessels kept their courses from the time you first saw them up to the time of the collision?

Yes, sir.

Q. About how fast was the steamer running?

A. I should judge she was running about ten miles an hour—traveling pretty fast.

Q. Did you see them when they came together?

A. Yes, sir. I saw them a moment or two before they struck.

Q. The schooner still keeping her course?

A. Yes, sir; as close to the wind as she could lay, and the

55 steamer apparently keeping hers. When the steamer passed her bow passed out-shore of the schooner. I think they were two miles and a half off shore, judging from my knowledge of the sea along there. Fishermen can tell by how long it takes them to row a certain distance. I think she was about two miles and a half off shore, or two miles, and I ain't sure I couldn't see between them or not, but that is the direction they seemed to be coming—a little angling—the schooner standing to the northwest, and the steamer outside of her, running the course of the beach. I should call it south 21½° west (but that won't state it, of course; I never was familiar with the mariner's compass), and as they drew together, the last of it when they were apart, they looked the distance of a man between the bows of the two vessels, and they closed that right up in an instant. I had no more than time to look

and see it when the steamer passed outside of her quarter. I didn't know whether she was going to clear her or not. As they passed the stern of the schooner swung in shore, and her bow off shore, and her spanker flew up and all tore to bits; and I hollered to my brother-in-law, says I: "That steamer has run that schooner down;" and in a moment or so they were clattering about the deck of the schooner, let both her sails down, and the men were running up the rigging; and I should judge in about five minutes' time her hull was under water. She seemed to list over almost instantly to the eastward, and went under. I saw the boys going up the rigging, and I see it merely saved them. One was partly under water and partly out. She went down to the bottom, and her cross-trees were out of the water. The pilot's boat came there. I saw the men rowing there in a boat, and I didn't look to see where they were going until they went to bring away the men. I didn't know whether it was some boat that was fishing off there, or whether it was a pilot-boat. And yet they traveled around so I thought there most be a pilot-boat somewhere around there.

56 Q. Did you notice the steamer after the collision?

A. Yes, sir. I could see the steamer went along down opposite Squam Inlet. At any rate she ran 20 minutes before she turned about.

Q. Did you see any change in her speed?

A. Not a particle that I could see. She kept on going until after the pilot-boat took the crew off the schooner before she turned. Then she came back.

Q. Now, at the time of the collision, were you still looking the schooner right in the face?

A. Yes, sir; just the same. Her course was not changed from the time I first saw her until she struck.

Q. This schooner was a little to the southeast of your standpoint?

A. Yes, sir; apparently drawing in to the land. The wind had been blowing all right, and it kept hauling around to the northward all the time; first to the west and then a few minutes afterwards it was northwest. I know the schooner was trying to head northwest.

Q. Was it a baffling wind?

(Objected to.)

Q. Do you know what a baffling wind is?

A. Sometimes in one direction and sometimes in another.

Q. (By the COURT.) This was not a baffling wind?

A. No, sir. The wind sprung up from the southwest very early—a good breeze—and kept hauling around gradually, until it got to the northwest before night, and cold.

Cross-examined:

Q. How far did you say the collision occurred from where you stood off shore?

57 A. I speak of the off-shore distance; I mean the mean distance from the schooner to the shore on a longitudinal line. It was a mile below me where they struck.

Q. How far were you from the place of the collision, to the best of your judgment?

A. That would be a diagonal line; it would be over two miles.

Q. Looking in what direction?

A. Pretty nearly southeast, about as near as I can guess. I should call it southeast.

Q. What course did you look when you first saw the steamer?

A. Back to the northeast.

Q. How much back?

A. Very little; just turned my head around in the wagon.

Q. How much to the southward was the schooner, as you looked, from the time you first saw the steamer coming; when you first saw the steamer you were looking down the beach?

A. Yes, sir.

Q. What was the name of that pilot-boat?

A. I don't know the pilot-boat's name, or the name of any of them. This was the only collision I ever saw at sea, and I know it was on the 26th of February, about 10 o'clock in the day, and I reported it to one of the agents of the Coast Wrecking Company immediately, as soon as I got back, Allen R. Cook; I reported to him the collision. I couldn't say anything further than that it was a steamer and a schooner.

ALONZO BEEBE, being sworn for libellants, testified as follows:

Q. What is your age?

A. 44.

Q. And your business?

A. Sandy Hook pilot.

Q. How long have you been a Sandy Hook pilot?

A. 23 years.

Q. Where do you reside?

A. In Brooklyn.

Q. Did you see or witness a collision between the Susan E. Wright and the steamer Benefactor at any time?

58 A. Yes, sir; I saw it just a minute after it happened, about.

Q. On what vessel were you?

A. It was aboard the schooner Henry Fay.

Q. How far in the wake of the Susan E. Wright?

A. About ¾ of a mile astern of her, coming up the beach with her, a little on her quarter.

Q. How was the wind?

A. The wind was about west-northwest.

Q. How was the Susan E. Wright sailing?

A. She was heading about a little on the land—about north by west, I should judge.

Q. Close-hauled?

A. Yes, sir.

Q. And how were you?

A. Just the same—by the wind.

Q. Did she continue that course?

A. Heading north by west; yes, sir.

Q. (By the COURT.) How far apart was her course from yours as you came up?

A. Pretty much the same.

Q. (By the same.) How much outside of her?

A. About three-quarters of a mile astern, and on her lee quarter.

Q. To the leeward?

A. Three-quarters of a mile astern, and on her lee quarter.

Q. (By the COURT.) How far apart were your courses; how much outside of her course was your course?

A. The way the wind was, we were both about on the same course—coming by the wind.

Q. (By the same.) Then you were astern of her, or in her wake?

A. Yes, sir.

Q. (By the same.) I thought you said you were a little on her lee quarter. If you had passed her on that course, how far away would you have passed from her if you had caught up and gone by?

A. Maybe a quarter of a mile.

Q. When did you see the steamer?

59 A. I saw her about a quarter of a mile before she passed the schooner, as she was coming down.

Q. How far were the vessels apart when you first saw the steamer?

A. About a quarter of a mile apart.

Q. And about what was the course of the steamer?

A. Her course was about south-southwest when she was running down.

Q. How fast was she running?

A. About nine or ten knots.

Q. Did you see any change in the course of the steamer at all after you first saw her?

A. No, sir.

Q. How far were the vessels apart when you last saw them before the collision?

A. A quarter of a mile away the steamer was before the collision.

Q. Did you continue to see the steamer after that?

A. I saw her when she was about two lengths astern of the schooner after she hit her, when she kept off to the eastward.

Q. Did you see her at all after the vessels were a quarter of a mile apart until she got astern of the schooner?

A. I see her when she was a couple of lengths astern of her, and when she kept off to the eastward, and then I took the glass and looked, and I saw the schooner's stern was gone.

Q. (By the COURT.) Which side of you did the steamer pass?

A. She went to the windward of us; she passed under the lee of the schooner.

Q. (By the same.) Which way did the steamer pass you?

A. She didn't pass us; she kept off before she got to us, and went right back.

Q. When you saw the steamer astern of the schooner what was the condition of the schooner?

A. Well, I saw her spanker torn, and I took the glass and saw

60 she was settling fast. I don't think it was over five minutes before I saw her go down. She heeled off shore and went down with the mainmast almost under water, and then she came up when she struck the bottom and righted. I saw the men going up in the rigging.

Q. Did you see any one go to the rescue?

A. I see these couple of pilot-boats coming down and sending their boats before the steamer got back to them.

Cross-examination:

Q. On what vessel were you?

A. I was on board of the schooner H. G. Fay, from the West Indies.

Q. Were you on board of her as pilot, piloting her in?

A. Yes, sir; sailing along with this schooner by the wind all the morning.

Q. What was your position at the time on the schooner when you first saw the steamer and after the collision? These times you have spoken of; where were you, at the wheel?

A. I was on the weather side, sailing her. It was blowing a good breeze, and you can't sail her standing on the lee side then.

Q. How fast was the other schooner going?

A. About nine miles an hour.

Q. You first noticed the steamer when she was, as I understand you, about three-quarters of a mile from the schooner?

A. About a quarter of a mile ahead of the schooner.

Q. Then you did not keep your eye on the steamer after that time until you saw there had been a collision?

A. No, sir; not at that moment I didn't. I just happened to see it after they hit.

Q. From that time the next that you noticed of the steamer was just after they had hit?

A. Yes, sir.

61 Q. Where away from you were those pilot-boats; that pilot-boat that went to take off the men?

A. They were to the northward of us both, coming running down, I suppose like enough, a mile or so to the north.

Q. How far astern were you sailing from the Susan E. Wright—how far astern of her were you?

A. I couldn't have been more than half a mile.

Q. How far below you did the steamer go before she turned?

A. She didn't go below me.

Q. How did she turn?

A. When she hit the schooner, I don't suppose there was more than a couple of lengths apart when I took notice of her; when she kept off to the eastward between me and the schooner.

Q. That would be on her starboard helm, wouldn't it?

A. Yes, sir.

Q. Go on and describe it. What did she do? Did she go off to the eastward and swing around?

A. She ran off quite a piece, and then came around back again slowly.

Q. Had you passed the wreck before she returned to it—before the steamer got back to it?

A. Yes, sir; I had got by her then. We were sailing about nine miles an hour. We were going fast.

Q. About how far out to the eastward do you think that the steamer ran before she began to round to, to return?

A. I should think she ran off three-quarters of a mile off shore, before she commenced to turn around.

Q. (By the court.) And crossed your bows then in doing that?

A. Yes, sir.

Q. You didn't notice the sailing of the schooner at all; you didn't pay any attention to her until you saw the collision, and when you saw it she was ahead of you?

A. The schooner?

Q. How she was handling her wheel, or anything of that kind?

62 A. Yes, sir; she was sailing by the wind, the same as I was, on a steady course, by the wind; I never saw any change in the schooner at all—in her helm.

Q. And the steamer passed you, as I understand you to answer the judge—no, never mind that. You were sailing on a course about a quarter of a mile to the eastward of the schooner's course; you were behind the schooner there, and running about a quarter of a mile off to the eastward of her?

A. Yes, sir.

Redirect:

Q. You say you didn't see any change in the course of the schooner at all?

A. No, sir.

Q. If she had changed her course would you have noticed it?

A. Yes, sir; because I was looking at her pretty much, because we were sailing both together; the one was trying to outsail the other, and that is the way I noticed it.

Q. So you did notice particularly the schooner all the while?

A. Yes, sir.

Recross:

Q. From the time you last observed the steamer down to the time the steamer struck the schooner, were you looking all that time at the schooner?

A. I was looking all the time at what there was ahead of me.

Q. During that period, from the time you last observed the schooner until after she had been struck by the steamer, were you, during all that time, observing the schooner?

A. Yes, sir; I was taking notice of her all the time.

Redirect:

63 Q. When you looked at the schooner after the collision, was her bearing the same as it was when you had first seen her from your schooner?

A. Her course?

Q. Yes.

A. Yes, sir; she was heading right along in the same course when she went down—right along the beach.

Q. How did she bear from you?

A. She bore about northwest from us, I should judge.

Q. Was there any change in that bearing at all?

A. No, sir.

Recross:

Q. What would be the effect of the blow of the steamer upon the schooner, striking her on her starboard quarter; wouldn't it change the heading of the schooner naturally?

A. Well, the steamer was running down, heading, I suppose, about south-southwest, and the schooner was heading about north by west, and of course she was right under the schooner's lee, or her starboard quarter.

Q. What effect would that have on her course?

A. A couple or three points would make quite a hole in her stern.

Q. I want to know whether such a blow wouldn't have necessarily carried the stern of that vessel around, bringing her head more to the northward—that blow?

A. Well, there was a good strong breeze of wind.

Q. Do you think the breeze was strong enough to sail the vessel against such a blow?

A. It could hold her up. The wind was so strong to the westward, it would hold her up when she was hit in the lee side.

Q. Then you say that the blow of the steamer did not change her heading, did not carry the stern around nor bring the head of the schooner more to the northward?

A. I saw very little change at all.

64 WILLIAM H. MOUNT, being sworn for the libellants, testified as follows:

By Mr. BENEDICT:

Q. Where do you live?

A. Monmouth County, N. J., near Long Branch.

Q. How long have you followed the water?

A. Since 1840; first commenced going to sea then.

Q. How old are you?

A. 52 years old last December.

Q. Were you the master of the Susan E. Wright?

A. Yes, sir; I was, and I was on her, with the exception of a short time up to the time of the collision. Once in a while I would stay back a trip.

Q. You were one of the owners of her?

A. Yes; I owned a quarter of her.

Q. Where had you come from at the time of the collision?

A. We came from Matanzas. We left Matanzas on the 17th of February.

Q. What crew had you?

A. There was seven of us, all told; the mate, four men before the mast, the cook, and myself.

Q. The cook and the steward were the same person—one man?

A. Yes, sir.

Q. Had you taken a pilot before the collision?

A. Yes, sir; I took the pilot in the morning, near breakfast time; I don't remember exactly; we generally have breakfast about half-past seven; the pilot-boat spoke us, I think, off Barnegat Lighthouse, which bore nearly west by north of us, distant perhaps 12 or 14 miles.

Q. How was the wind at that time?

A. The wind, I should judge then, was near west, perhaps a little to the southward of it.

Q. And what course were you on?

A. She was heading in then; I think I left the wheel, or took the wheel rather, while we were taking the pilot on board; I was then at the wheel myself; to shake her up in the wind, and get the
65 pilot on board. I think the wind, when we fell away again, I think she headed in then about northwest by north.

Q. About what time in the morning was that, do you say?

A. I think it was near half-past 7 o'clock; might have been a little later.

Q. After that time what did you do on board the vessel?

A. After that time I went down and got my breakfast, and asked the pilot to come and get some with us; he objected; said he had just had breakfast on board of the pilot boat; the mate and me went down and ate breakfast, and the pilot whilst I was gone to breakfast took the wheel and sent the man that was steering to get his breakfast.

Q. What time did you all get through breakfast?

A. It was near 8 o'clock, I suppose—not far from 8 o'clock; may be a little before.

Q. Were you standing watch and watch?

A. Yes, sir.

Q. What time did the watches change?

A. The watches changed at 8 o'clock.

Q. Which watch came on then?

Redirect:

Q. You say you didn't see any change in the course of the schooner at all?

A. No, sir.

Q. If she had changed her course would you have noticed it?

A. Yes, sir; because I was looking at her pretty much, because we were sailing both together; the one was trying to outsail the other, and that is the way I noticed it.

Q. So you did notice particularly the schooner all the while?

A. Yes, sir.

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Q. About what time in the morning was that, do you say?

A. I think it was near half-past 7 o'clock; might have been a little later.

Q. After that time what did you do on board the vessel?

A. After that time I went down and got my breakfast, and asked the pilot to come and get some with us; he objected; said he had just had breakfast on board of the pilot boat; the mate and me went down and ate breakfast, and the pilot whilst I was gone to breakfast took the wheel and sent the man that was steering to get his breakfast.

Q. What time did you all get through breakfast?

A. It was near 8 o'clock, I suppose—not far from 8 o'clock; may be a little before.

Q. Were you standing watch and watch?

A. Yes, sir.

Q. What time did the watches change?

A. The watches changed at 8 o'clock.

Q. Which watch came on then?

A. The port watch came on at 8 o'clock; my starboard watch was relieved.

Q. Who composed your watch?

A. A man by the name of Charles Lucken, I think, and John Collins.

Q. When the watch was changed who went to the wheel?

A. A man by the name of Peter Burns, I think his name was; Peter we called him.

By the COURT:

Q. He was in the mate's watch?

A. Yes, sir.

Q. After he took the wheel what was the course of your vessel?

A. The course was by the wind; that was given to him, or I gave that after we fell off, after the pilot came on board—by the wind.

66 Q. How was the wind during that time of the morning?

A. The wind hauled a little more to the northward after that, up to the time of the collision, and then it was hauling a little more to the northward.

Q. What kind of a wind was it?

A. The wind was baffling and blowing pretty strong.

Q. What do you mean by baffling?

A. It would vary a point or two; it was not steady.

Q. How long before the collision had you been on deck?

A. I think after I got breakfast I forgot to wind up my chronometer; I was on deck, and I went down in the cabin to wind the chronometer, and during that time the pilot came down, and I think we warmed ourselves; we may have been there 15 or 20 minutes, and then I was not off the deck again until we had to take to the rigging.

Q. Whereabouts were you on the deck during that time?

A. I was part of the time forward and part of the time aft; I was walking the deck back and forth (it was cold), and keeping a lookout all around.

Q. What sail had you on?

A. In the mornings we put on all sails, top sails and everything; we were reefed during the night, as we had a very heavy squall.

Q. After breakfast what sails had you on?

A. We then had all the sails we had; we had them all set.

Q. Did you make any change from that time before the collision?

A. Yes, sir; the wind breezed up and we had to take in the top-sails; we couldn't stand it.

Q. How long before the collision did you take in the top-sails?

67 A. Somewheres near 9 o'clock; may be when we clewed up both top-sails; our mizzen top-sail was unbent; we clewed up the two top-sails when we got them in a little, and when I hauled down the outer jib top-sail, I think that was probably half-past 9 o'clock, or a little later.

Q. Was there any reefs in your other sails?

A. No, sir; excepting the jib had no bonnet in it; what I mean by that is, the reefs to the jib that we take out to shorten it.

Q. Did Burns take that wheel?

A. Yes, sir.

Q. Who was forward on the lookout?

A. The mate was forward and one man.

Q. Did you see what the man was doing forward or know what he was doing?

A. Yes, sir; I ordered him to clear the masts off the anchors, and take out some things we had in the forecastle, and to overhaul some chain.

Q. What was the name of the man that was forward with him?
A. His name was Hugh McAdam.
Q. Whereabouts on the deck from that time were you?
A. I was walking back and forth on the deck, and to leeward.
Q. Was there anything to obstruct your view forward?
A. Nothing at all, sir.
Q. Were the sails so that you could see forward?
A. Yes, sir; I could see under her booms; you could walk under her booms.
Q. When did you first see the steamer?
A. I couldn't tell the exact time.
Q. How long before the collision, do you think?
A. I suppose it was in the neighborhood of half an hour, or a little less.
Q. How fast was your vessel running?
A. She was going somewhere not far from eight miles; she might not have been going quite so fast.
Q. How far away do you think the steamer was when you first saw her?
A. Well, she must have been some five or six miles; may be seven miles.
Q. How did she bear from you?
68 A. She bore on the starboard bow.
Q. How much?
A. Well, perhaps a point or a point and a half; from one point to two, say.
Q. Did you continue to watch her course from that time on?
A. I did; I remarked to the pilot that there——
(Objected to.)
Q. Did you call the pilot's attention to the steamer?
A. Yes, sir; I told the pilot that there were two steamers under our lee, and made the remark to him that they would both go to leeward of us.
Q. How were the two steamers that you saw with reference to each other?
A. I should think one steamer was probably a mile, or from one mile to two ahead of the other, and about two miles apart, or may be a little more than two miles; the other steamer was further off shore than this one.
Q. Was it the inshore steamer that proved to be the Benefactor?
A. Yes, sir.
Q. Will you state what you saw from the time you first saw the steamer, with reference to her course?
A. Do you mean in relation to the steamer's course?
Q. Yes.
A. Well, I was watching her more or less all the time, and I didn't see her alter her course until I suppose the vessels were from three to five lengths apart, and then I see her slack her mainsails, and I see we were bound to have a collision, and I ran aft; I was forward, or about amidships of our vessel, near the centre of her, so I could see to leeward. I see her slack her mainsail, and I think she tried to keep off, but I didn't notice enough to see whether she changed her course or not; if she did, it was very trifling.
69 Q. You say that about that time you were standing amidships; how long had you been there?

A. I had been walking about the deck; I can't say; I can't place the time.

Q. At that time how was your vessel heading?

A. I should judge she was heading about north by west, or perhaps half a point either way from it. I can't tell, because I was not by the compass to notice, nor didn't notice it only by judging from the land.

Q. How did the steamer bear from you when you were five or six lengths apart?

A. She would bear about north-northeast; not far different from that, or may be a little more to the north of it; but a trifle.

Q. That would be about how many points on your starboard bow?

A. Well, north-northeast would be about three points.

Q. Can you tell before that what course the steamer was running?

A. She seemed to be running parallel with the coast, about south-southwest, or south-southwest half west, may be.

Q. Where was the pilot at that time?

A. He was standing by the man at the wheel.

Q. You say that at that time you started and went aft?

A. I went right aft as soon as I could get there.

Q. Where did you go to?

A. I went by the wheel.

Q. And what did you do there?

A. As I got there the pilot stepped away from it, and I got to it and tried to put it aport, but I don't think that I moved it more than two spokes, for we was right in the act of the collision, and the steamboat was coming right direct at me, so that I had to leave it, or if I stayed there perhaps I might have been killed, and I drove the man away and told him to go forward out of the way.

70 Q. When the vessel struck where were you standing?

A. I think I had got near the mizzenmast.

Q. And the man and the pilot, where were they?

A. The pilot was forward at the mizzenmast, and the man, I think, was forward of the mizzenmast too, but I won't be certain about him.

Q. How far is that from the wheel?

A. It is 33 feet, or thereabouts; may be a little less; that is, 33 feet from the wheel; it may be 30 feet.

Q. Where did the steamer strike you?

A. I should judge she came in about 10 feet—I mean about 12 or 14 feet from our stern-post on the starboard quarter; came right in where we had the steward's pantry.

Q. What was the effect of the blow on your vessel?

A. It seemed to cut a piece right off. She went a diagonal course for about 6 feet, I should judge; I mean from three to four feet, may be more; three or four feet; perhaps five feet from the stern post right at the wheel where we stood to steer, and cut that piece right off and knocked the whole stern right out, knocked the stern out, and the boat and everything went.

Q. Did she carry your stern-post out?

A. No, sir.

Q. How near to the stern-post did she come?

A. I think within three or may be four feet.

Q. How wide is your vessel at the stern there?

A. I think it was 20 feet. I think her transom was 25 feet; it was either 25 or 28 feet long, and now I disremember which exactly.

Q. How soon did your vessel sink?

A. I couldn't tell. We were a little under excitement, perhaps; I will say from 5 to 15 minutes.

Q. What did you do after the collision?

71 A. Lowered the mainsail and the foresail, ordered the halliards to be cast off, and the part to be run down, and then took to the rigging. I also told the rest to get to the rigging—to the mainmast.

Q. Did you get all out before the water reached her?

A. No, sir; the water wet some of them. I think the pilot was on ahead of me, and another man, I think, on the main rigging going up the mainmast, and the steward, and I think there was a man by the name of Collins, below me, and she went over on her beam ends very much to the eastward, and when she got near the bottom she righted, and in her righting it threw the steward out of the rigging into the water, and I told John (there happened to be a plank or something about) to save the steward; to pass it to the steward; for the vessel then was going ahead some, because she was leaving the plank; so he got the plank to him and so he hauled him up into the rigging; we got him into the rigging about the time the vessel hit the bottom, I suppose.

Q. How were you taken off from the rigging?

A. We was taken off by the pilot boat; I think the Blunt—the E. G. Blunt; I won't say as to her first name—No. 2.

Q. How far was she away from you at the time of the collision, and where?

A. I can't say exactly; I think it was a little while before she had spoken us, and our pilot had taken a handkerchief and waved it to him that he was on board, and she went off; perhaps she might have been a mile, perhaps not more than three-quarters of a mile.

Q. Which way?

A. Nearly astern of us; a little to the leeward; a little on the lee quarter.

Q. Did you see this other schooner that was astern of you?

A. Yes; I had been seeing her all the morning; we came out of Matanzas together.

Q. Which got to you first, the pilot boat or the other schooner?

72 A. The pilot boat got to us first; the schooner didn't stop for us, because they see the pilot boat was there taking us off or was coming to us.

Q. What do you say of the course of the steamer after the collision?

A. She went on right by us. I held up both hands and asked them to stay by us, that we were going straight to the bottom; but they went right off under the same speed that they had been going, as far as I could perceive, and she went down perhaps a couple of miles or more below us, and went somewhat to the eastward, and after a while she came back, and I asked him if he was going to New York, and he said "No;" that he was bound south. We then was on the pilot boat. I couldn't name the length of time exactly, for I don't seem to remember it.

Q. She did not come back there to you till you had all got on the pilot boat?

A. No, sir; we had been on board the pilot boat and had got a cup of coffee; we had been down in the cabin and got a cup of coffee before the steamer got back to us; the captain was very kind to us.

Q. Can you tell what course the steamer went off on after the collision?

A. No, sir; that I didn't notice, for we were in the act of climbing the rigging and looking at other things.

Q. Did you hear any hail from the steamer before the collision?
A. Not any.
Q. Was there any hail from your vessel?
A. I think not; not any.
Q. How was your vessel heading at the time of the collision?
A. I was not by the compass to tell you the exact course; but I should judge she was heading about north by west.
Q. Did your lifting or heaving the wheel make any change in her course at all?
A. No, sir; it had no effect on her, what little I done to the wheel.

73 Q. What kind of a vessel was the Susan B. Wright?
A. She was a good vessel, built at Belleville, out of good oak. She was built in the year 1867, and went to sea on her first voyage on Christmas, I think.
Q. Who were the owners of her?
A. William H. Mount, that is myself, owned one-quarter; Mr. Adam Patridge owned one-quarter; Mr. Gordon White owned one-eighth; Adam Longstreet one-eighth; Seneca Patridge one-sixteenth; Arion B. Jackson, one-sixteenth; Justice Nelson, one-sixteenth, and Dennis Zoe, of Hoboken, over here, owned another sixteenth.
Q. Is there any one by the name of Ford?
A. No, sir; Zoe used to be a ship's blacksmith.
(Counsel for libellants, Mr. Benedict, asks leave to amend the libel, by substituting the name Ford for Zoe. Motion granted, no objection being made.)
Q. What cargo had you on board at that time?
A. A cargo of sugar; 462 hogsheads and 200 boxes.
Q. Any deck load?
A. Yes, sir; one hogshead we couldn't get in the hold; we had it lashed on deck and covered up with some spare canvas.

Cross-examination:

Q. You took the pilot, before you took your breakfast?
A. Yes, sir; the breakfast was ready, and I told the steward we could wait till the pilot got on board.
Q. That was a little before eight o'clock in the morning?
A. I think it was not far from half-past 7 o'clock; it might have varied five minutes from it; it might have been a little later.
Q. While the men were taking breakfast, the pilot took the wheel?

74 A. Yes, sir; and after breakfast, I told the man, whosever wheel it was, to relieve the pilot but the pilot stayed there by him all the while.
Q. Now, the men returned, and the watch was then set at 8 o'clock. At that time it was the mate's watch. Who were in the mate's watch?
A. Peter Burns and Hugh McAdams.
Q. After that what change did you make in your sails?
A. We clewed up the topsails and the outer jib, and the other watch was called to help take in these sails.
Q. How long after 8 o'clock was that done?
A. I think it was in the neighborhood of 9 o'clock we clewed up the topsails, and about half past 9 o'clock, or somewheres thereabouts, we hauled down the outer jib.
Q. Was there anything more done to the sails after that?
A. No, sir.

Q. The sails then remained from that time down to the collision as they were then?

A. Yes, sir.

Q. After thus lowering those sails, you directed the mate to go forward to arrange the chains, did I understand you to say?

A. Yes, sir; to clear out under the forecastle, and clean the mats of the anchors, and clear away some things around there.

Q. Did he go?

A. He went forwards; he had the man to do it; I told him to set the man to doing it, and he was there with me.

Q. That man was Hugh McAdams?

A. Yes, sir.

Q. About what hour in the morning was that?

A. That must have been somewheres about a quarter of 10 o'clock, or thereabouts; I can't say; may be a little closer to 10.

Q. What hour do you say the collision occurred?

A. I think it was a little after 10 o'clock; probably 10 or 15 minutes after 10 o'clock; I couldn't say—only knowing the time after we got on the pilot boat; I had no watch with me.

Q. After you sent the mate forward, where were you?

75 A. I was walking back and forth on the deck.

Q. You didn't go below?

A. No, sir; I never was below after I wound up the chronometer, I think.

Q. Where were the men in the other watch after the sails were taken in?

A. They were down in the forecastle getting on their oil-clothes.

Q. And they were not on deck from that time down to the time of the collision?

A. After we took in the outer jib they were not; no, sir; not that I remember of; they were not called for anything; they wanted to get on their oil-clothes, because the spray was flying.

Q. Had you seen the steamer when you took in the outer jib?

A. I saw them before we took in the outer jib; I went forward and was looking right at her when we were hauling the outer jib down.

Q. About how long do you think it was from the time you hauled the outer jib down before the collision occurred, or got through with the sails?

A. It might have been 20 minutes, or perhaps a little bit longer; I don't think it was much more than 20 minutes.

Q. During all that time Peter Burns was at the wheel?

A. Peter Burns was at the wheel; we hadn't changed it yet.

Q. And the pilot was by the wheel?

A. And the pilot was by the wheel.

Q. Were you not standing there by the wheel also, by the pilot?

A. No, sir; sometimes I walked along aft with the pilot; I was doing so when he spoke this other pilot boat when she passed us, and signaled her with his handkerchief.

Q. Were you not on the quarter-deck with the pilot during all the time?

A. No, sir; I was not.

Q. Where were you then?

76 A. I was walking back and forth on the deck, and keeping a lookout on both sides of the vessel.

Q. Were you a lookout?

A. That was my place to be a lookout, of course.

Q. You were performing the duty of a lookout?
A. Yes, sir.
Q. You had no other lookout but yourself?
A. The mate was there ahead.
Q. There was no man stationed there professionally as a lookout?
A. No, sir; we hardly ever do in day time at sea.
Q. How fast do you say your vessel was sailing at that time?
A. I think she was going about 8 miles; probably a little less.
Q. And the steamer, how fast do you think she was sailing or running?
A. She was coming somewheres in the neighborhood of ten miles an hour.
Q. Did you observe whether she had any sails on?
A. Yes, sir.
Q. What sails?
A. A mainsail and a jib; I think a little while previous to this she bursted the foresail she had.
Q. Did you see it burst?
A. No, sir.
Q. Then you don't know it?
A. I seen her clewing it up.
Q. (By the COURT.) Where was you then? Was that after you had taken in your outer jib?
A. I think it was about the time I was hauling down the outer jib, or a little afterwards.
Q. And you were then standing along amidships, do you say, at that time?
A. I was walking back and forth on the deck; I went forwards about the time we were hauling down this outer jib—that is, I went forwards on the poop; we had a poop that ran near forwards.
Q. The steamer was running down the coast, you say; that would be southwest, about as near as you can judge?
A. Yes, sir.
77 Q. And your course was from north to north by west, and north-northwest?
A. Yes, sir; north by west, and sometimes north-northwest, I suppose.
Q. How did you suppose the steamer was going to pass you?
A. I supposed she would keep off and go the leeward of us, as we was by the wind and had the right of way.
Q. Then when you returned back to the wheel, whom did you find at the wheel?
A. The pilot was there and Peter Burns was there also.
Q. Did they both have hold of the wheel then?
A. I can't tell that, because sometimes the pilot would assist to help him to get it up.
Q. How was it, if you can remember; did the pilot and the man each have hold of the wheel at that time?
A. Sometimes they did.
Q. No, no; when you went back towards the wheel yourself, who had the wheel?
A. Peter Burns.
Q. Did the pilot have hold of it also, or not?
A. I don't think he did; I couldn't say for certain.
Q. Was he standing by the wheel?
A. He was standing within perhaps from two to four feet of it.

Q. Which side of the wheel was he?
A. On the weather side.
Q. That would be the port side?
A. Yes, sir.
Q. And Peter Burns was on the starboard side?
A. Yes, sir.
Q. And from what side did you approach the wheel?
A. From the port or weather side; the higher we are the better we can see the horizon all around us.

Q. When you got there to the wheel, did you take hold of it?
78 A. I tried to get her to port, so the vessel would make more of a glancing blow.

Q. Then you took hold of the wheel in order to direct the course of your vessel?
A. I endeavored to try to get the wheel up, but I didn't move it more than two spokes before I had to leave it.
Q. What did you attempt to do; you wanted to do something; what was it?
A. I wanted to get clear of the collision, if possible.
Q. How did you do that?
A. I didn't see no way after I got there of escaping the collision.
Q. How many spokes do you think you turned it?
A. I don't think I moved it more than two.
Q. Who helped you to move it?
A. Peter Burns; and then I told him to get away from there.
Q. Those spokes were to the port?
A. We rolled it to starboard.
Q. When you rolled your wheel, did it bring the bow of your vessel to the port or starboard?
A. It naturally took her head to the starboard; if the wheel was put to the port, it takes the vessel's head to the starboard.
Q Where is Peter Burns?
A. I don't know.
Q. Have you seen him since the day of the collision?
A. Yes, sir.
Q. Where?
A. I saw him into Mr. Beebe, Wilcox & Hobb's office.
Q. Where is the pilot?
A. We subpœnaed him to be here.
Q. Then he is in court, perhaps?
A. I don't know; he is out there. Yes; he is here.
Q. When did you last see Peter Burns?
A. I think the last time I saw him was into Mr. Wilcox's office.

Q. After the suit had been commenced?
79 A. Yes, sir.

Q. Was it after you had taken the testimony of some of your witnesses?
A. Not before you; they only just had given mere statements. It was not until afterwards that they examined them before you.

By Mr. BENEDICT:

Q. You say that you saw Burns in Beebe, Wilcox & Hobb's office. Do you know if he made a statement there?
A. I think he did; I think that is what he was there for.
Q. Do you know whether he was afterwards subpœnaed to be examined as a witness?

A. I think he was. No, sir, I don't; I don't think he was subpœnaed by them; I didn't understand the statement.

Q. You didn't serve any subpœna on him personally?

A. No, sir.

Q. Did you understand that he was going to be examined?

(Objected to; withdrawn.)

Q. That was how long after the collision that you saw Peter Burns in the office of Beebe, Wilcox & Hobbs?

A. It was in the neighborhood of a week. I couldn't say whether it was longer or not.

Q. Do you know what became of Burns; ever seen him since?

A. No, sir; I understand he was boarding over on the East River side somewheres some time afterwards.

Q. Have you made search for him?

A. Yes, sir.

Q. Have you been able to find him?

A. I have not of late; not for some time afterwards.

Q. How lately have you made any search for him?

80 A. I searched for him maybe within a week or two weeks after the collision, and I lost sight of him after that, and I don't know what has become of him.

Q. How long before the collision did you see the mate?

A. I can't say any length of time.

Q. You don't recollect noticing the mate after he went forward at all?

A. I don't remember seeing him after he went forward.

Q. Did you notice what he was about forwards?

A. Only he was walking the deck there; I did notice that he was walking the deck after I told him about going forwards.

Q. I understood you to say that your idea in trying to port the wheel was to lessen the danger of the collision?

A. Yes, sir.

Q. In what way would you have that result?

A. If we could have kept the vessel off any, it might have struck a more glancing blow.

Q. By putting the wheel to port would swing her stern?

A. Yes, sir.

Q. How far away was the steamer from you at that time?

A. I don't suppose she was over—well, perhaps three lengths, or thereabouts.

Q. Where was she pointing for?

A. Right at us, as we stood at the wheel.

Q. Did you have any conversation with the captain of the Benefactor after you got on board of her?

(Objected to as the captain is dead; taken subject to objection.)

A. Yes, sir; there was some little talk, one side or other. After we got on board, the mate, who had sailed with me some day, a good many years ago, he asked me——

(Objected to.)

81 Q. Talk about what occurred between you and the captain.

A. I asked him—or he asked me into the pilot house to get warm, and after we were in there a while I asked him to go back and take notice how far the vessels were off shore at the time of the collision. The pilot and myself walked back to the after end of this steamer's deck to notice how far my vessel was off shore from the land, and we judged her 2¾ and 2½ to 3 miles; we varied a little. I judged about 3 miles, and they reckoned about 2½, and from 2½ to 3 miles; then there

was very little more said. I guess their captain felt bad, and I did, too There was little said in any way of conversation. I didn't notice much.

Q. Was there anything said about the other steamer?

A. Yes, sir.

Q. What was said about them?

A. I think the pilot that was with us got up on the steamer's deck first, out of the side ladder, out of the little boat that transferred us from the pilot boat. I think he remarked to our pilot that there was a steamboat under his lee, that came out of the dock with him, and says he, "She hain't beat me much." I heard the captain distinctly remarking that that steamboat hadn't beat him much, and I don't remember noticing her name, or hearing tell of it; but she was quite a big steamer.

By Mr. OWEN:

Q. Who was present at that conversation besides yourself and the captain?

A. He was talking those words to the pilot of our vessel.

Q. Your pilot?

A. Yes, sir; I heard him make that remark at the time.

Q. The conversation was not with you, but between the pilot and the captain?

A. Yes, sir; he was remarking that to the pilot.

Q. And you overheard it?

A. Yes, sir.

82 Q. There was no conversation at that time directed to you?

A. Not that part of it.

Q. After that occurred the conversation in which you varied from 2½ to 3 miles off shore?

A. They thought 2½, and I thought 3 miles, as she laid on the bottom there.

Q. Now, you are very sure that you put your wheel to port, what little you did?

A. What little I did move it, I tried to move it to port.

Q. You are sure it was not to the starboard?

A. I am sure of that, yes.

Q. What effect did the blow have on your vessel, in regard to changing her heading?

A. Well, now, I can't say. I have no doubt that it knocked her off, maybe, a point, or from one point to two; I think it did knock her head off.

Q. It couldn't be otherwise, very well?

A. No, sir.

Q. The wind being on her bow, and also acting with the blow—the wind blowing her out to sea?

A. Yes, sir; and the spanker being bursted we lost that sail. By keeping that in the wind it would naturally make her fall off.

Q. Did you notice any lowering of the sails of the steamer?

A. I noticed them trying to slacken her mainsail down when they got very near.

Q. Did they get the mainsail down before they struck?

A. No, sir.

Q. How near were you, or where were you when you noticed the slacking of the mainsail; where were you standing?

A. I think I stood somewhere near amidships, and then I ran aft.

By Mr. BENEDICT:

Q. How did the steamer bear from you at the time you noticed she was slacking her mainsail?

83 A. She bore in the neighborhood of north-northeast.

Q. How was she coming for you?

A. Coming on our starboard bow.

Q. She was a little on your starboard bow?

A. May be three points on our starboard bow, coming right for us.

Q. And about how far distant from you when she slacked the mainsail?

A. Perhaps four lengths, or four or five.

By the COURT:

Q. Was this other steamer ahead or behind the Benefactor?

A. I think she might have been ahead about a mile, or two miles ahead of her, and a mile more off shore.

By Mr. OWEN:

Q. Did you ever know the name of that other schooner?

A. No, sir; I did not. I would like to state one thing now. I noticed when we got on board of the steamboat that her jib hid the view to leeward of us on her port bow; and another thing that I would like to state that the mate told me——

Mr. WILCOX. You can't do that.

WITNESS (continuing.) Well, I noticed the jib had that effect so that you couldn't see to leeward.

Q. (By Mr. BENEDICT.) Whereabouts on the steamboat was you when you noticed that?

A. In her pilot-house.

Q. (By Mr. OWEN.) That is, when they were coming up, heading in another direction?

A. Yes, sir; but she also had the jib set then.

Q. The jib would be off on the starboard coming up, and off on the port side going down, wouldn't it?

A. Yes, sir; and it must have hid the view off the steamer's lee bow coming down.

84 WILLIAM HIRST, being sworn for libellants, testified as follows:

(Examination of this witness objected to, as he has already been examined by deposition; taken subject to objection.)

Q. What is your business?

A. Cook and steward.

Q. You were cook and steward of the Susan E. Wright?

A. Yes, sir.

Q. How long have you followed the water?

A. About fourteen years.

Q. What time did you have breakfast on the morning of the collision?

A. Somewhere about twenty minutes before eight.

Q. Was that the time you got through, or how?

A. The time me and the captain went down.

Q. What time do you think they got through—all hands?

A. Somewheres about ten minutes after eight.

Q. And after that time what were you doing?

A. I went to and fro from the galley into the cabin, from somewheres about quarter past eight till about a quarter of nine, when the captain

and the pilot went out of the cabin on the poop, where they talked politics.

Q. Just answer my questions. Did you leave the cabin then?

A. Yes, sir.

Q. And went to the galley?

A. Yes, sir.

Q. Were you in and about the galley from that time until the collision?

A. No, sir.

Q. Where were you?

A. I went to and fro three or four times from the galley to the cabin.

Q. How long before the collision were you on deck?

A. Somewheres about from three to four minutes.

Q. Where did you come from?

A. From the tank on the port side of the vessel, near the cabin. I went for a bucket of water.

85 Q. Did you see the steamer?

A. Yes, sir.

Q. While you were at the tank?

A. Yes, sir.

Q. Where did you see her?

A. I saw her from about a quarter of a mile to half a mile ahead of us, a little inclined to our lee side; that was the starboard side of the vessel—the lee side.

Q. Where was this tank that you were standing at?

A. On the port side.

Q. Whereabouts?

A. Near to the cabin.

Q. Near what mast is that?

A. It was somewheres about two feet forward of the mizzenmast.

Q. And then you saw the steamer, as I understand you, on your starboard bow?

A. Yes, sir.

Q. Can you tell how she seemed to be heading with reference to your vessel?

A. No, sir; I couldn't tell how she headed.

Q. Did she seem to be heading towards you? Did you know she was coming towards you?

A. She looked as if she was coming towards us.

Q. You noticed that?

A. Yes, sir.

Q. Did you notice how your vessel's sails were at that time?

A. Yes, sir.

Q. How were they?

A. There was a spanker, a mainsail, a foresail, and two jibs.

Q. How were they with reference to the wind?

A. Oh, all sharp up, you know.

Q. On which side?

A. To the starboard, which was the leeward; the port was the weather side.

Q. After you saw the steamer that way, then did you go back to the galley again?

A. Yes, sir; with my water.

Q. Were you in the galley at the time of the collision?

A. Yes, sir.

Q. You didn't see the steamer from the time you saw her at the tank until after she struck?

A. No, sir; not till after she struck.

Q. When she struck did you go right out.

86 A. Yes, sir; and ran into the cabin.

Q What was the condition of things on deck when you came out of your galley?

A. When I came out of the galley I saw the spanker and the boom broke that held the spanker, and I went down into the cabin.

Q. You saw the spanker broke or carried away. Did you see the stern carried away—the stern quarter?

A. Yes, sir.

Q. Did you notice how the sails were at that time when you came out of the galley?

A. Yes, sir.

Q. How were they?

A. Sharp up still.

Q. Full of wind?

A. Going by the wind, "full and by."

Q. Did the steamer appear to stop after the collision?

A. No, sir.

Q. How far off did she keep before she came back to you?

A. About an hour or an hour and ten minutes before she came back.

Q. At that time where had you got to?

A. On the pilot-boat.

Q. You don't know how the wind was that morning?

A. No, sir.

Q. From the time when you saw the steamer at the tank, I wish you would tell us just exactly what you did from that time until the collision.

A. From leaving the tank?

Q. Yes.

A. Well, when I saw the captain and the pilot and Peter Burns at the wheel, I turned my head over my shoulder and I says, "Well, hif hever."

Q. What did you do after you saw that steamer; never mind what you said?

A. I got my bucket of water; I went from the tank on the port side of the schooner to the galley, where I stood, I suppose afterward, from 4 to 5 seconds, looking at the steamboat; and I says to myself, "I will go below; there is a pilot and the captain aboard, and there is

87 nothing going to happen," and with that I descended 6 or 7 steps into the galley, and put my bucket on the bench, and took the dipper and took two dippers of water, and reached over my stove and took my tea kettle and was attempting to half fill it, when I heard the crash; that would take somewhere between two and three minutes at the most.

Q. How far did you have to walk from the tank to the galley?

A. From 30 to 40 feet.

Cross-examination:

Q. Have you been examined in this case as a witnes' before?

A. Yes, sir.

Q. Did you sign a deposition that you made?

A. Yes, sir; in your office.

Q. (Showing witness a signature to a deposition.) Is that your signature?

A. Yes, sir.

(Counsel for claimants now offers to read the cross-examination of this witness from his deposition; objected to; not allowed.)

Q. How long had you been connected with the Susan E. Wright before the collision?

A. How long was I on her?

Q. Yes.

A. Somewhere about seven months.

Q. What time did you rise on the morning of the collision?

A. Half-past five.

Q. What did you next do then?

A. I went to the galley.

Q. Now, go on and state all you did up to 8 o'clock.

(Objected to; allowed.)

Q. Now, then, take 9 o'clock; you was doing something at 9 o'clock, you say?

88 A. I turned out at half-past 5; we were under close reefs at that time; five minutes to 6 the watch was called; 25 minutes past 7 the pilot came; at 20 minutes to 8 the captain and the mate went to breakfast; at 5 minutes to 8 John Collins was relieved from the wheel by the pilot; he came to the cabin-door and said, "Steward, I want my breakfast," and I looked at the clock, and said it wasn't eight bells yet; it was 5 minutes to 8; and he said, the pilot has taken the wheel from me; at this I ran forward and gave him his breakfast; and I then cleared up after they got their breakfast, somewhere about 10 minutes past 8, and took my dishes forward, and comes back about a quarter to 9, and the captain and the pilot was in the cabin talking politics; and then the pilot went on deck, and the captain says, "I must go, steward, and look out for the vessel," and I said, yes; at that time it was somewhere about a quarter to 9; well, I went to and fro from a quarter to 9 till somewheres about quarter past 10, at the collision; that was the time I looked at the clock; it was a quarter past ten after I went into the cabin; and this is about the same statement I made to you 13 months ago.

Q When you came out and crossed over to the water-tank to get the water, did you notice the captain?

A. Yes, sir.

Q. Where was he?

A. On the quarter-deck or cock-pit.

Q. By the wheel?

A. Yes, sir.

Q. Who was with him there?

A. The pilot and Peter Burns.

Q. Did you notice the captain when you returned with your water?

A. Yes, sir; they were all at the wheel, then; the captain, you could see him walking to and fro in the alleyway; he would walk on the lee side.

Q. Now, as you crossed over the last time, what was that expression you made?

A. "Well, hif hever!"

Q. What did you mean by that?

A. A kind of a by-word.

89 Q. You didn't think, then, that there was any danger of a collision at that time?

A. I was looking at the steamboat. I put dependence in the captain and the pilot, you know.

Q. Did you intend by that expression to signify that you thought there was any danger of a collision; you didn't think that there was any danger of a collision, did you?

A. Yes, sir; when I saw her edging for us, but then, as seafaring people think, when they have got a pilot on board the vessel, they think everything is right; they look on a pilot as a little Jesus, or something of that kind—that they won't run you ashore, and that you won't get wrecked.

Q. Then you have great faith in your pilot?

A. Yes, sir; the same as a little Jesus.

Q. Then you supposed everything was all right; you had no anxiety about the safety of the vessel, and you governed your action by that?

A. Yes, sir.

Q. And you went into your galley without any anxiety on the subject?

A. Yes, sir.

(Mr. Owen again offers the cross-examination of this witness from his deposition. Objected to; ruled out.)

CHARLES LUCKEN, being sworn for libellants, testified as follow:

(Counsel for claimants object to this witness being examined, as his deposition has already been taken.

Taken subject to objection.)

Q. You follow the water?

A. Yes, sir.

Q. How long have you followed the water?

A. Since 14 years of age.

Q. What countryman are you?

A. German born.

90 Q. Were you a hand on the Susan E. Wright?

A. Yes, sir.

Q. When did you join her?

A. In '74, sir.

Q. Where?

A. New York.

Q. Did you continue with her until the collision?

A. Yes, sir.

Q. Whose watch were you in?

A. In the captain's watch.

Q. What time did you change watches that morning?

A. Four o'clock in the morning.

Q. And then again when? From 4 to 8?

A. From 4 to 8, my watch was on deck.

Q. Were you at the wheel during that time?

A. I was at the wheel from 4 to 6; I relieved the wheel at 4 o'clock.

Q. After that where were you?

A. Making sail.

Q. How was the wind?

A. The wind was about west-southwest or southwest; something like that.

Q. Your watch changed at 8, you say?

A. Yes, sir.

Q. Did your watch go below?

A. Before we got our breakfast.

Q. What time did you get through with your breakfast?
A. From twenty-five to thirty minutes.
Q. After 8 o'clock?
A. I don't know whether it was after 8; up till breakfast, I say.
Q. From that time on, where were you until the collision; from the time you went below until the collision where were you; you went below at what time?
A. When they told us to go below to get breakfast; when we got our breakfast we got called up again.
Q. You were called up again; what for?
A. To relieve the wheel, and to get the battens off the hatches—I mean off the main hatch.
Q, What did you do yourself?
91 A. I was taking the batten off the main hatch.
Q. You went to work taking the batten off?
A. Yes, sir.
Q. Who was with you?
A. Hugh McAdams and John Collins, and the mate himself.
Q. Did you get the battens off?
A. No, sir.
Q. How long did you work at the battens?
A. About two or three minutes.
Q. Then what did you do?
A. So the captain said, "Never mind the battens; we will have a pretty stiff breeze before long."
Q. Then what did you do?
A. The mate said me and John Collins could go below.
Q. You went below did you?
A. Yes, sir.
Q. How long did you stay below?
A. We were below about half an hour or twenty minutes; I can't tell exactly.
Q. What then?
A. They called us up to take in the topsails, and we took in the main and foretopsails.
Q. Then what?
A. When they were furled, we went below again.
Q. About what time was that; do you know?
A. No, sir; I can't tell you the time.
Q. After you went below then how long did you stay below after that?
A. About 10 or 15 minutes.
Q. Then what?
A. They called us up to take in the jib topsail.
Q. After you took that in, what?
A. The mate said we should take the mats off the anchor, and so I said, we will go and put our oilskins on, because I didn't want to get wet; so the mate said, "Never mind; you and Collins can go below."
Q. Did you go?
92 A. Yes, sir; and McAdams he sent to take the mats off the anchors.
Q. How long did you stay below that time?
A. Well, it might be 20 minutes; I was sitting there taking a smoke.
Q. Smoking?
A. Yes, sir; we were talking together, when something struck against

the vessel—a heavy crash—so we jumped out of the forecastle, and I looked over the starboard side, and I saw the steamer's stern was abreast of our main-rigging, with the mainsail half down.

Q. That is, the steamer's mainsail?

A. Yes, sir.

Q. When you came out of the forecastle, how far from the stem did you come out; how far aft is the forecastle door from the stem?

A. Pretty near one-third of the vessel.

Q. Then the steamer's stern was astern of you?

A. Yes, sir; about abreast of me, so near as I could judge by seeing them.

Q. Now, when you went down before the collision, how was the schooner's sails?

A. By the wind.

Q. How was the wind?

A. That is what I can't tell you; of course, we were laying in to the land, and the wind was from the northward and westward.

Q. Had you seen the steamer at all when you went below?

A. No, sir.

Q. When you came out, after the collision, how were your sails then? Did you notice?

A. They were partly shaking.

Q. Did you see what was done to the spanker?

A. Yes, sir.

Q. What was that?

A. The boom was broke.

Q. Where did you go when you came out on deck?

A. They had given orders to haul down the flying-jib, so we went and hauled down the flying-jib, and then the water came over the rail, and everybody went for the rigging.

93 Q. Did you see what injury the schooner had received?

A. No, sir; I didn't notice where the blow was; but I noticed her starboard side, that it was abaft the mizzen-rigging; but that is all I know.

Q. Did you and Collins come out together?

A. Yes, sir.

Q. Were there anybody else below but you and he?

A. No, sir; I was the first, and he was the second coming out; only the two of us.

Q. Did you see what the steamer did after the collision?

A. She went on, so far as I could see.

Q. How far away did she go?

A. About a mile I should say.

Q. You were taken off the rigging by the pilot-boat?

A. Yes, sir.

Q. Had you got on board the pilot-boat when the *the* steamer got back?

A. Yes, sir; we were aboard the pilot-boat when the steamer came.

Q. And from the pilot-boat you went on board the steamer?

A. Yes, sir.

Q. And came up to the city in the steamer?

A. Yes, sir.

Q. Where did you go when you came here?

A. To a boarding-house.

Q. What boarding-house?

A. Sheckler's, in Washington street.

Q. Who went with you?

A. James Collins and me, and Peter Burns and McAdams and the steward—all except the mate; he didn't went.

Q. Any of the Benefactor's people go there too?

A. Yes, sir.

Q. Who?

A. There was one of the wheelsmen came ashore the same night as we came; there were two of them left, but only one boarded there.

Q. What were their names, do you remember?

94 A. No, sir; I can't tell you.

Cross-examination:

Q. How long did Peter Burns stay with you at that boarding-house?

A. I was there only three days.

Q. How many times did you see Peter Burns in the city after you went to that boarding-house—after the collision?

A. I can't tell you; I seen him sometimes; I went up to the boarding-house sometimes.

Q. Did you go with him to Beebe, Wilcox & Hobbs' office?

A. He was to come along with us one morning, but he didn't come; he came afterwards.

Q. How far from the shore do you think the schooner was when the collision occurred—how many miles off—about what distance?

A. I don't understand you.

Q. How far was it from your schooner to the shore when the steamer struck you?

A. About two and one-half or three miles—I can't say exactly—by my judgment.

Q. Did you see anything on the shore?

A. I see houses just as plain as I see your face.

Q. You have been examined as a witness in this case before?

A. Yes, sir.

Q. Your testimony was taken down in writing?

A. Yes, sir.

(Mr. Owen offers in evidence the cross-examination of this witness in hisdeposition. Objected to; ruled out.)

Q. (Showing witness a deposition.) That is your name and signature there, isn't it?

A. Yes, sir.

JOSIAH JOHNSON, being sworn for libellants, testified as follows:

95 Q. Where do you reside?

A. In the city of Brooklyn, sir.

Q. What is your occupation?

A. Sandy Hook pilot.

Q. How long have you been a Sandy Hook pilot?

A. 25 years next October.

Q. In April, 1875, were you attached to the pilot-boat Blunt, No. 2?

A. I was, sir.

Q. Did you witness the collision in that month between the steamship Benefactor and the schooner Susan E. Wright?

A. I did, sir.

Q. Which vessel did you see first?

A. I saw the steamer.

Q. In what vicinity were you at that time?

A. We was down, I guess, about off Ocean Grove—a place called Ocean Grove, in New Jersey.

Q. On which hand did you have the steamer?
A. The steamer was to the north of us.
Q. Astern of you?
A. Astern of us—yes.
A. And about how far?
A. Well, she was in sight of us a couple of hours; running to the southward with us; we were running to the southward, and so was she; she was to the northward of us four or five miles, both going south.
Q. About what was the steamer's rate of speed?
A. Nine to 10 knots.
Q. What was your rate of speed?
A. Possibly we ran along 8 knots; we were under reefed canvas; she was going much faster—the steamer was.
Q. The steamer was gaining on you?
A. Yes, sir; we were not going south continually; we spoke this schooner, and altered our course; we run to the south'ard and eastward; that brought her nearer to us.
Q. What was the course of the steamer?
A. I judge she was steering about from south by west to about south-southwest.
Q. What part of your vessel were you on?
A. At the time of the collission?
96 Q. Yes.
A. Well, I was on the deck—different parts of the deck and cabin during the morning.
Q. When you arrived in the vicinity of the point of the collision, about where were you standing on your vessel?
A. I was standing in what we call the cock-pit; I think I was steering at the time; we had spoken this schooner; the pilot takes the helm that is speaking the vessel.
Q. Did you speak the Susan E. Wright?
A. Yes, sir.
Q. How far off from her did you speak her when you passed by?
A. Within hailing distance, so we could hallor to them handy.
Q. Inside?
A. The Blunt passed to the westward of her.
Q. How was the Susan E. Wright headed at that time?
A. I should judge she was heading about north by west.
Q. Did you notice her sails?
A. I know she had three lower sails—that is, the foresail, the mainsail, and spanker, and several jibs; I can't say how many jibs she had on her.
Q. How were the sails trimmed?
A. By the wind; steering by the wind.
Q. What was the direction of the wind?
A. I think it was about west-northwest; it veered around sometimes, a point or two points—sometimes from west by north to northwest by west.
Q. How fast was the Wright sailing, if you noticed?
A. Well, possibly going along 7 or 8 knots with that breeze.
Q. When you passed the Wright did you notice this steamer?
97 A. I had been noticing her for several hours off and on; I don't know that I took particular notice of her just then.
Q. Do you remember noticing the steamer after you passed the Wright at any time before the collision?
A. Yes, sir.

Q. When you passed the Wright how were you heading?

A. Well, I think probably we were heading along about south by west, and in speaking her we run down into her and hauled up with her so as to get under the stern of the vessel to speak her; I should say about south by east.

Q. Are you able to tell the distance between your pilot-boat and the steamer at the time?

A. Well, I suppose possibly they were inside of two miles of one another.

Q. (By the COURT.) When you spoke the schooner?

A. Yes, sir.

Q. (By Mr. OWEN.) With the steamer astern of you?

A. Yes, sir; to the northward of us.

Q. Directly astern of you?

A. Well, about the time we were speaking this schooner we were steering no particular course, sometimes south-southeast and sometimes south by east.

Q. Did she bear on your port side?

A. She was rather on our port quarter, I think.

Q. (By the COURT.) How did the steamer bear from the schooner when you spoke the schooner?

A. I should judge in coming together.

Q. (By the same.) No; you saw them, you were within hailing distance of the schooner. Now, how did the steamer bear from the schooner?

A. Possibly bearing along north by east, or north-northeast probably.

Q. The steamer bore from the schooner at that time about north by east?

A. Yes, sir; from that to north-northeast.

Q. Did you continue to notice the steamer after you passed the schooner?

A. Yes, sir.

98 Q. Did you see the steamer when she struck the schooner?

A. Yes, sir; I was taking particular notice of her.

Q. Did you observe any change in the course of the steamer from the time you passed the schooner up to the time she struck the schooner?

A. No, sir; I can't say that I did, but from the movements on board of the steamer I judged he put his helm a-starboard and attempted to settle his mainsail down.

Q. If there was any change he put his helm to starboard?

A. Yes, sir; I judge from that fact he had put his helm to starboard.

Q. How near were the vessels together when you saw this change in the mainsail

A. They were very close together, but a very short distance apart, possibly 4 or 5 times the length of the vessels apart.

Q. Had you noticed any change in the speed of the steamer up to the time that you saw this change in the sail?

A. No, sir, none whatever; none that I could observe.

Q. Had you also noticed the schooner?

A. Yes, sir.

Q. State what you noticed about her if you noticed anything?

A. Well, I remarked to them on board the boat——

(Objected to.)

Q. Just tell what you noticed.

A. I noticed they were going to come together from what I saw. I could plainly see that the vessels were about coming together.

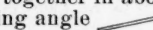
Q. Why did you conclude that; from the courses you were on?

A. Yes, sir; I could see no alteration in their courses and I knew they must come together if there was no alteration.

99 Q. You saw them strike?

A. Yes, sir.

Q. How did they come together?

A. Well, the steamer, as I say, was running about south-southwest, southwest or south-southwest, or somewhere along south by west, and they came together in about that position, (illustrating with his hands the following angle ), and I suppose when the steamer attempted to settle her mainsail down she starboarded her helm and struck abaft the mizzen rigging.

Q. How far away from the steamer and schooner were you at that time?

A. Not more than half a mile.

Q. In what direction did they bear from you?

A. About north, I should judge. We steered a bout south after speaking them, I think.

Q. What did you do on your vessel when you saw the collision?

A. We wore our boat around and went and took the crew off. I was prepared to take them off; I knew they were going to sink the schooner; I was perfectly satisfied of that and we lowered our boat and got ready to pick them up.

Q. How long before the collision did you remark on board of your boat that there was going to be a collision and make preparations to take them off?

A. Maybe a minute; I sung out to the rest of the pilots, "there is going to be a collision; come on deck," and at the same moment I put our helm up and wore around and went after the crew.

Q. Had you got your helm up at the time the vessels came together?

A. I had already put up the helm; the schooner had swung off considerable after the steamer hit her; she swung off and went along through the water and got considerable speed.

Q. In what direction did she go?

A. Going off—knocked off to the north-northeast; probably two or three points knocked off.

100 Q. (By the COURT.) Did she go down nearer to the coast than where she was when she was struck, or further off?

A. Possibly a little nearer, if anything; I don't know if there was any difference.

Q. Then you came back?

A. Yes; we came back and catched the schooner about the time she was settling down and launched both our yawls and sent them off to her when we got alongside of her; I instructed them to go alongside of her after she sunk; she had not sunk when we were alongside in our boat.

Q. When you got up towards the schooner did the steamer pass you?

A. Yes, sir.

Q. On which side?

A. To the westward or windward; I won't be sure.

Q. On your port hand?

Yes, sir.

Q. How did she seem to be going?

A. I did not observe that she had slackened her speed down any at that time.

Q. What was her course at that time?

A. Well, she was heading off more than she was when she struck the

schooner; there was considerable confusion there, and I suppose they were not particular as to what course they were going.

Q. Did you notice how far she ran before she stopped?

A. I couldn't; she went some distance to the westward of us and appeared to lay around there.

Q. You were noticing more particularly about the wreck?

A. Yes, sir; we had all of them on board some time previous to the steamer's coming to us.

Q. And you transferred the Susan E. Wright's crew to the Benefactor, did you?

A. I did, partly; not then; I hailed them and asked them if they were going back to New York, and if they were I would put the crew aboard, and he said no, he was not, that he was going to the southward; but in the course of half an hour or so he came down to us
101 again, when bound in along the beach, and sent a man to us and said he was going to return and to send the crew to board, and we did so.

Cross-examination:

Q. About how far were you from the Wright when you spoke her?

A. Within hailing distance; we could holler to her.

Q. Who answered your hail?

A. The pilot that was on board the schooner; signaled me with his pocket handkerchief.

Q. What is his name?

A. Charles MaNamee.

Q. Did you know him?

A. Yes, sir.

Q. Is he one of your pilots?

A. Yes, sir; a New York pilot; a Sandy Hook pilot.

Q. Is the pilot in court to-day?

A. Yes, sir.

Q. At that time the steamer was behind you coming along at a distance of about—what do you say—how far behind you when you passed this schooner by?

A. Probably two miles astern of us.

Q. Were you more off to the leeward, running on a line more to the leeward, or the windward of her?

A. Running further off.

Q. About what was the distance between those lines you were running on?

A. We were not steering any particular course, and it would be a hard matter for me to say; we were steering various courses—sometimes south-southeast, and sometimes south by east, and sometimes south.

Q. How fast were you sailing?

A. About eight knots, sir.

Q. What kind of a breeze had you?

A. A very fresh breeze—a strong breeze; we were under reefed canvas—reefed down.

Q. Have you given the course of the wind?

A. West-northwest, or thereabouts.

Q. How much faster was the steamer running than you—sailing or running?

102 A. Possibly a couple of knots faster than us; two miles, possibly, may be a little more; I can't say exactly how she was coming.

Q. How far did you say you were from the schooner when the collision occurred?

A. No more than a mile.

Q. To the northward or southward of her?

A. To the southward of the schooner.

Q. Did you change your relative bearings, or how were you sailing then with reference to the line of the schooner?

A. I think likely we were steering along about south. I am not positive, though we were steering in that vicinity.

Q. How much to the eastward of the line of the schooner were you at that time?

A. Very little, sir; she must have been bearing very near north of us.

Q. "Very little" don't answer the question?

A. Bearing very near north of us.

Q. And you looked back continually, and kept watch of these two vessels?

A. I did finally; after I saw that they were drawing together I took particular notice of them—watched them in particular.

Q. When did you first notice they were drawing together?

A. Shortly after I spoke the schooner.

Q. Did you notice what caused the drawing together? Was it changing the courses, or the speed?

A. The speed of the two vessels, that drawed them together; one was going north, and the other going south, and there was a difference of opinion.

Q. How much did their lines of direction cross each other at all?

A. About three points.

Q. The schooner was crossing the steamer's course about three points?

A. No; between the two of them; they were both crossing each other, one heading south by west, is one point, and the other
103 heading south-southwest—south by west, would be two points, and south southwest three points.

FEBRUARY 21ST, 1876.

Hearing adjourned until February 21st, 1876, at 12 m.

Hearing resumed: all sides present.

Mr. WILCOX. If the court please, we have made efforts to procure the attendance and testimony of two of the seamen on board of our vessel, but without success, Hugh McAdam, and Peter Burns; the latter was our wheelsman. We subpœnaed him to attend a de bene esse examination, with the other seamen who have already been examined before Com'r Owen, on the 10th of March, 1875, at 3½ o'clock. I hold in my hand an affidavit of service; and on that day I attended, myself and counsel, and they did not attend.

(Counsel for claimants object to this entry being made on the records of the court.)

Mr. Wilcox reads the regular subpœna for their attendance, and states that the examination was regularly noticed.

By the COURT to Mr. OWEN. You object to the form of proving it, I suppose.

Mr. OWEN. Yes, sir.

By the COURT. I conceive that the fact that he subpœnaed the men is a competent fact for him to prove.

Mr. OWEN. Yes, sir; but not in this form—in the way of deposition.

104 Mr. WILCOX. I have a notice which reads as follows: first comes the title of the cause, and then, "Please take notice," &c.

Mr. OWEN. That is not in any manner before the court.

Mr. WILCOX. I have an affidavit of service on the master of the vessel for his appearance.

Mr. OWEN. By the boy?

Mr. WILCOX. By a young man in our office named Tuttle.

By the COURT. Then you must call Tuttle, who served the affidavit.

EDGAR S. TUTTLE, being duly sworn for libellants, testified as follows:

Q. On the 10th of March, 1875, you were messenger in the office of Beebe, Wilcox & Hobbs?

A. Yes, sir.

Q. (Showing witness a paper.) Did you ever see the paper I now show you?

A. Yes, sir; I served a copy of that paper.

(Notice of examination of witnesses before Commissioner Owen, marked Libellant's Exhibit A., February 21st, 1876, for identification.)

Q. Did you make an affidavit of service at the time?

A. Yes, sir.

Q. Is this the affidavit?

(Taken subsequent to objection.)

A. Yes, sir.

Q. What did you do with the notice?

A. I served it on the captain of the steamship Benefactor.

Q. On what day?

A. On the 10th of March, 1875.

105 By Mr. OWEN:

Q. How old are you?

A. I was 15 years old then.

Q. How long had you been in the office of Beebe, Wilcox & Hobbs at that time?

A. About a year.

Q. Where did you leave this subpœna?

A. I think pier 15, North River; I had to go to several places to get the captain.

Q. The notice, I mean?

A. On the steamer.

Q. How?

A. By giving it to the captain and showing him the original.

Q. How did you know he was the captain?

A. He told me so.

(Mr. Wilcox now offers the notice in evidence.)

Q. Have you seen that paper before? (Showing witness a subpœna for the attendance of Peter Burns and Hugh McAdam, to be examined as witnesses in the case of "Wm. H. Mount et al. vs. The Steamer Benefactor," on the 10th of March, '75, at 3½ o'clock.)

A. Yes, sir.

Q. Did you serve that subpœna?

A. Yes, sir.

Q. On whom?

A. On Peter Burns and Hugh McAdam.

Q. On what day?

A. On the 10th of March, 1875.

(Marked Libelant's Exhibit B, for identification, February 21, '76.)

By Mr. OWEN:

Q. Where did you serve them?

106 A. I served Peter Burns at 161 Washington street, and Hugh McAdam in our office.

Q. How did you serve it?

A. By delivering a copy to them, and money for traveling fees, and I showed them the original.

Q. How much did you give him?

A. I don't know exactly now; I think it was a dollar and a half.

Q. Had you seen Peter Burns in your office before that time?

A. Yes, sir.

Q. You knew him, did you?

A. I knew him to be the man; yes, sir.

Q. Have you seen him in your office after that time?

A. No, sir; I never see him in the office after that time.

Q. Have you ever seen him anywhere after that?

A. No, sir.

(Mr. Wilcox now offers the subpœna in evidence; already marked.)

Q. You saw Peter Burns at 161 Washington street, did you?

A. I think that was the number.

Q. What did he say?

A. I don't remember. I handed it to him, and he said he couldn't take it, and I said that he would take it; and he pushed it away, and I picked it up and put it in his coat, and showed him the original, and give him the dollar and a half.

Mr. OWEN:

Q. Did he take the money?

A. Yes, sir; it was pinned to the subpœna ticket. He chucked it on the floor, and I picked it up and gave it to him.

Mr. WILCOX:

Q. Did you inquire for McAdam?

107 (Objected to; not allowed.)

The witness then says: One of the sailors threatened to shoot me if I came there. It was a saloon, and I saw Burns. I asked the bartender first, and he pointed him out to me, and as soon as I saw him I knew it was him, and then I asked for McAdam, and they wouldn't tell me where he was. Then they went up-stairs, and I saw a man coming out of the dining-room into the hall, and I asked him if his name was McAdam, and he said no; says he, if you serve me with that subpœna, or done to me what you done to Burns, I will shoot you.

(Objected to.)

The court holds that McAdam was served.

Mr. Wilcox says that he attended for the examination of the witnesses, and they did not appear, and he then examined other witnesses.

Mr. OWEN. When did the examination commence and when did it terminate?

Mr. WILCOX. On the 10th day of March, as appears by the certificate of the commissioner, and terminated on the 15th of March.

Mr. OWEN. What efforts, if any, were made between the date of the service of the subpœna in the first place and the termination of that examination to procure the attendance of Peter Burns?

Mr. WILCOX. I simply made no efforts of my own to go for them; I sent after them; I called Captain Mount's attention to it, and spoke to

one of the young men in the office; that is long ago, and I have not given it any thought since, so what I state may not be very reliable; I think I spoke to two of our young men to make efforts to find them.

EDGAR S. TUTTLE, recalled for libellants.

Q. After you served these subpœnas and while this examination
108 was pending, after the 10th of March, do you remember my calling your attention to trying to find Burns and McAdam?

A. Yes, sir.

Q. Did you try to find them?

A. Yes, sir; but I couldn't find anything about them at all.

Q. Where did you go?

A. I went around to 161 Washington street, but I didn't go down stairs. It was down in a basement, and I asked several men that were standing around there, and they said they were not around, neither of them.

Mr. WILCOX. I may also state that after the report from Tuttle, the last witness on the stand, that I employed detectives to find these men, and paid them for it, and they never found them for me. I have got their receipts. I paid them after they reported that they couldn't find them.

Mr. OWEN. Have you made the same inquiry after Norwood?

Mr. WILCOX. Yes.

Mr. OWEN. Did you find him?

Mr. WILCOX. No, sir.

Mr. OWEN. Don't you know that he was coming in and out of this port all the time, week after week?

Mr. WILCOX. No, sir.

WILLIAM HIRST recalled for libelants.

Q. You knew Peter Burns, did you not?

A. Yes, sir.

Q. Have you ever made any exertions to find him?

A. Yes, sir.

Q. And what did you find?

A. I went to Mr. Anderson's Nova Scotia shipping office, in Old Slip, and he told me he shipped him somewhere about last April, to go to Antwerp, Belgium, and as for after that he couldn't tell me whether
109 he stayed by the vessel or run away from the vessel; he couldn't tell, because a great many sailors, when they do go to Europe, have run away.

Q. When did you make these inquiries?

A. Somewhere about 9 or 10 days ago.

Cross examined:

Q. When did he say he shipped him?

A. Somewheres about April last.

Q. Does he know him?

A. Yes, sir.

Q. How do you know that he knew him?

A. Because I asked his name, and he knew his name, and had it on the records of his books.

Q. How long do you know Peter Burns was around here from the time of the collision?

A. He stayed at Sheckler's for 8 or 9 weeks in the city, 153, I think it is, Washington street.

Q. You saw him frequently during that time?
A. Yes, sir.
Q. Did you see McAdam during that time, too?
A. No, sir; he cleared out, and didn't want to have anything to do with it in any way.
Q. You didn't see him afterwards?
A. No, sir.
Q. Was Peter Burns at the wheel at the time of the collision?
A. Yes, sir.

WILLIAM H. MOUNT recalled for libelants.

Q. You knew Peter Burns and Hugh McAdam, did you not?
A. Yes, sir.
Q. They were seamen on board of the schooner at the time of the collision?
A. Yes.
Q. Did you make any efforts to find Hugh McAdam or Peter Burns to secure their testimony?
A. I did; I think I went two or three—perhaps four times—to try and find them, at the boarding-house where I sent them at the landing in New York.
Q. Which boarding-house was it?
A. His name was Sheckler; but I can't give his number now; it is in Washington street.
Q. Did you succeed in finding him?
A. No, sir; I did not.
110 Q. When, with reference to the time of the examination of Lucken and Hirst, did you go to find them?
A. I went at that time and afterwards, and I think the day before.
Q. And then you went pending the examination of Lucken and Hirst to find them?
A. Yes, sir.

Cross-examination:

Q. Did you have any conversation with Peter Burns in reference to the collision after you came ashore?
A. Yes, sir.
Q. Frequently.
A. Well, some two or three times; I wouldn't say which.
Q. Did you see him in Beebe's office at any time?
A. Yes, sir.
Q. About what time did you last see Peter Burns?
A. I couldn't remember exactly the time it was; but it was about the time of the taking of their depositions in your office.
Q. You were present, I think, on the taking of the depositions?
A. Yes, sir.
Q. Hugh McAdam, spoken of here, was the man that was on the deck assisting the mate as you have before testified?
A. Yes, sir.
Q. He was the man that was forward, helping the mate?
A. Yes, sir.
Q. And Peter Burns was the man at the wheel?

Mr. WILCOX. We have now examined all our witnesses except the pilot on the schooner. We are aware that our friends will expect us to produce him. We have subpœnaed him, and now produce him for them

to examine him if they desire to. We have concluded not to make him a witness of our own.

111 Mr. OWEN. Do you decline to produce him or examine him?

Mr. WILCOX. We won't call him, but he is here.

Libellants rest.

EVIDENCE FOR CLAIMANTS.

Mr. E. L. Owen reads deposition of Nels Nelson, as follows:

I am thirty-four years of age; I have followed the sea about eighteen years; I am not a married man; I expect to go to sea before long.

I was formerly connected with the steamship Benefactor, as able seaman.

I was on board of her at the time of the collision with the schooner Susan Wright. I was in the captain's watch; the captain, second mate, and two able seamen were in that watch; this was my first trip in the Benefactor; I joined her about four days before in New York.

I had been seaman in steam vessels before, and had been accustomed to steer them. I have been in a good many steamships; I have been connected with the Inman line, and have been accustomed to steer steamers of that line.

I have been second mate of two sailing vessels.

Further examination of this witness is adjourned to March 24th, at 3 p. m., by request of libellants' counsel.

And further adjourned to March 29, at 3 p. m., by request of claimant's proctors.

Examination resumed March 29th.

112 My watch commenced at eight o'clock on the morning of the collision with the Susan Wright.

When I first came on deck I went on the lookout.

I stood forward and walked across the deck.

When I first came on deck before I went on lookout, I worked around deck a little. I was about an hour at that work, and then went on the lookout. After I went on the lookout I did nothing but keep a lookout. I saw the schooner Susan Wright while I was on lookout.

I think she was about two miles off when I first saw her. She bore about two points on our port bow. I went to the wheel from the lookout, and the man at the wheel went forward on the lookout. When I went to the wheel I took the wheel. I stood on the starboard side of the wheel. The course was given to me, south-southwest. I held the ship on that course. Captain and second mate were in the pilot-house with me. I noticed the schooner after I got into the pilot-house; she bore on our port bow. I afterwards noticed a movement on the part of the schooner. I saw her keeping off a little. An order was given to me at that time. The captain told me to port the helm. This order was given at the same time the schooner appeared to be keeping off.

I can't say exactly how far the schooner was away at that time. I did not take much notice. I obeyed the captain's order to port the wheel. I changed about a point and a half, so that we headed about southwest-half-south. I noticed the schooner after that; she luffed right up. Upon that the captain told me to starboard the helm, and struck two bells at the same time to stop the engine. The captain helped me starboard the helm.

I hardly got steadied on the port helm when the order came to star-

board. I had got the wheel hard over before the vessels came together. Our vessel changed on the starboard helm to about southeast.

113 I heard the bell pulled to stop the engine, and noticed the engine stop. At the same time the captain gave orders to lower the mainsail. I did not notice whether that order was executed. I did not look back. Lowering the mainsail would make the vessel keep off quicker.

We struck the schooner on the starboard quarter—right on the quarter. Before this sail was lowered the steamship had up the jib, foresail, and mainsail.

At the time we struck the schooner her booms were amidships, and the sails all shaking, and the wind right ahead of the schooner.

Cross-examined by libellant's counsel:

I had been aboard the Benefactor at the time of the collision four days.

I had shipped on her to go to Wilmington and back to New York. I signed shipping articles. I shipped by the month.

The Benefactor left New York about six o'clock in the morning. I was on board of her the night before all night. I did not do anything after knocking off time, which was five o'clock in the evening. I turned in about nine o'clock. I slept in the forecastle. I turned out next morning about five o'clock. All the crew turned out with me. It was the mate's watch when we left New York. I don't remember the names of any who were in the mate's watch; they were all strangers to me.

I remember Pete in my watch. There were four in each watch; there were four in the captain's watch; but there were only three in the mate's watch. In the captain's watch were the captain, second mate and two able seamen. I don't know the name of the second mate. The other able seaman in the captain's watch was Pete.

114 I joined the Benefactor four days before we left New York. During that time I scrubbed the paint work and worked in the rigging.

From the time we left up to the time my watch commenced at eight o'clock, I was on deck coiling up lines and clearing up deck. There was no watch set until eight o'clock. I got my breakfast at about half-past seven in the morning. My watchmate, Pete, messed with me—no one else. After breakfast, at eight o'clock, Pete and I came up on deck. Pete took the wheel at eight o'clock, and the mate's watch then went below. When I first came on deck, I had some lines to coil up. I was aft then. I did not remain there very long—about ten minutes or quarter of an hour. The second mate helped me. I then had some lines forward to coil up, between the windlass and the pilot house. After I got through doing that work forward I went on the lookout. I can't say how long I was engaged forward coiling up the lines by the windlass. I was not very long. The next thing I was told to go on the lookout. I went on the forecastle deck. Soon as I got done with the lines aft the second mate went into the pilot house. I saw him go into the pilot house. When I was coiling up the lines forward there was no one else there. I can't tell how long after breakfast it was before I went on the lookout. When I went on the forecastle deck I saw the captain and second mate in the pilot house, but I did not see any one on the outside of the pilot house on the forcasle deck. I walked across the forecastle deck on the lookout. I could see into the pilot house. I saw a man—Pete, my watchmate—at the wheel, and the captain and second mate in the pilot house. The captain and second mate were looking out of

the window to windward. They were neither of them sitting down at any time I saw them from the forecastle deck. I can't say how far it is from the pilot house to the stem.

115 The pilot house was a little on the after part of the forerigging. The pilot house is higher than the forecastle deck.

A man standing in the pilot house by the wheel would stand about four feet higher than the level on which I was walking. The forecastle deck is flush with the deck of the whole vessel.

The forecastle deck extends to the stem, and from one side of the deck to the other.

About an hour or so after I went on the forecastle deck I went into the wheelhouse. I can't say any nearer than that. I relieved Pete at the wheel.

When I took the wheel I saw the captain and second mate standing in the pilot house. When I relieved Pete at the wheel he went forward on the lookout; I saw him. Pete gave me the course when I took the wheel; it was south-southwest. The wheel was about midships, I think. It was ten o'clock when I took the wheel. I saw the schooner when I took the wheel. I can't say how long I saw the schooner before I took the wheel. It was a good time. I did not see the schooner when I first went on the forecastle deck.

I cannot tell how long after I went on the forecastle deck it was before I saw the schooner. When I did see her I made her about two points on our port bow. I did not take notice what sails the schooner had on when I first saw her. Afterwards I noticed that she had on topsail, foresail, mainsail, mizzen sail, jibs. The booms were on the starboard quarter. She was sailing close-hauled. From the time I saw the sails I did not see any change, except she kept off a little. That was after I went into the wheelhouse. She remained two points on our port bow from the time I first saw her up to the time of the collision, except that after she kept off a little; she bore about a point and a quarter on our port bow.

116 When I went into the wheelhouse she was about a mile off. When I observed her keep off a little she was about three-quarters of a mile off. When I observed her to keep off I ported my helm, which threw the steamer's head about southwest, half south.

The schooner was then about half a mile off. The captain and mate were still in the wheelhouse when I ported. They had not sat down.

Up to the time when I ported the helm the helm was about midships.

I ported one turn of the wheel around, not quite hard aport. By one turn I mean all the spokes of the wheel.

I had not got the wheel hardly steadied before I was told to starboard the helm. Then I saw the schooner come right up.

The schooner was coming up; then the captain gave me the order to put the wheel hard astarboard, and the captain helped me.

I had hardly got the steamer steadied under the port wheel when I saw the schooner coming up. Then the captain gave the order to hard astarboard, which I did, and he helped me. The vessels were close together when I saw the schooner coming up. I got the wheel hard over to starboard before the vessels struck. About three or four minutes after I got the wheel over to starboard before the vessels came together. It was a little after I got the wheel over to hard starboard when the vessels came together. I can't tell how long. I had got the head of the steamer up to the southeast course a little more, to the leeward of southeast, I think. When I starboarded the helm the vessels were a quarter

of a mile apart, I think. I can't tell how many lengths of our vessel made a quarter of a mile.

117 The captain struck two bells before he took hold of the wheel. I don't know how fast we were running before the two bells were struck. There had been no change in the speed of the steamer up to the time the two bells were struck. The captain, at the same time he gave orders to starboard the helm, gave orders to lower the mainsail.

I saw our vessel strike the schooner. The bow of our vessel struck the starboard quarter of the schooner a little on the port side of our stem, just on the corner of the stem.

All I saw is that a hole was in the schooner and she sank soon after. I did not take notice of her stern floating off.

After I went into the wheel-house the captain and mate remained, both of them standing all the time up to the time of the collision. I saw a man, Pete, on the forecastle deck all the time; he was the lookout, walking across the deck.

I did not report the schooner when I first saw her on the lookout, because the captain and mate were looking through the window, and there were so many vessels besides.

All I heard Pete say up to the time of the collision was to give me the course when I went into the wheel-house. There were windows in the wheel-house; some of them were down for the captain and mate to look through; the windows on each side were open; the window in front was closed.

I am positive the windows on each side were open and that in front closed.

I don't know what the dimensions of the wheel-house are; I don't know whether it was twenty feet wide; I don't know whether it was fifty feet wide; I will swear I don't know whether it was ten or twenty feet wide. The wheel runs across the keel, so that a man standing at the wheel would look ahead.

118 While I was in the wheel-house I did not see any one except the captain, second mate, and Pete.

I stayed at the wheel until 12 o'clock, when my watch ended.

After the collision I steadied the wheel on the starboard helm; as soon as the wreck was clear I changed the wheel to midships; then we kept off again to the wreck; we were then about two schooner's lengths from the wreck; we turned right around to the wreck.

I saw the schooner's men get on to the pilot boat; we were then heading right for the wreck, and were about a quarter of a mile off; it took us so long a time to come around.

After the collision one bell was struck to go ahead, and a jingle; after that we stopped her again to come close to the wreck.

We took the men on board and came up to New York; I don't know what time she arrived at pier 13, North River; about five o'clock; there was a hole knocked in our port bow close to the stem.

After the collision the captain ran forward to see if our vessel was hurt any; it was not reported to me; as soon as we were clear of the wreck the steamer was turned right around, and she was turned right around before I knew of the hole being knocked in her.

After the vessel arrived I remained on board until night; then I went to my boarding-house in Carlisle street, No. 8; the house is kept by Albert Nelson; I have been there ever since; I have been in no boarding-house excepting that; I do not know of any of the men except myself leaving the Benefactor; I saw none of the men of either vessel at my boarding-house after I came on shore; I have seen the crew of the Benefactor on

the Benefactor; I saw one of the men of the schooner one day walking the street; I don't know his name; I did not see him in any boarding-house.

119 I was paid my wages the same night I left the Benefactor; that was five dollars; it was paid on the vessel by the captain; it was my wages due to me.

I left the lookout and took the wheel, because it was my wheel at ten o'clock; I knew it was ten o'clock when I took the wheel, because I saw the clock in the pilot house; I knew I was to take the wheel, because the second mate sung out four bells; it did not mean when the four bells struck for the mate's watch to come out; one man stands at the wheel through half a watch; at the same time I took the wheel I looked at the clock and it was ten o'clock.

I did not take any notice of the time the vessels came together.

The wind was west; I don't know exactly how many points the wind struck on our bow; about six points from our course.

If we were steering south-southwest, the wind would be west; when we came up from south-southwest to southwest, half south, we had the wind on our starboard bow.

Redirect:

I think our vessel left the dock at New York about six o'clock in the morning of the same day the collision occurred.

Q. Did you not leave the dock during the night previous to the collision?

(Objected to as leading.)

A. No, sir.

Q. After the schooner had kept off and you had ported as you have testified, if the schooner had kept on her course at that time and you had kept on your course, how would you have passed the schooner; that is, on which hand, port or starboard, and how far off from her?

120 A. We would have passed her on the port side of us, and about a cable's length from each other.

Recross:

Q. That is, you would have crossed the schooner's bows about a cable's length ahead of her?

A. We would not have had to cross the schooner's bows.

Q. Then how would you have passed her?

A. On parallel courses.

Q. After you had ported and the schooner kept off, as you have testified, what course do you say the vessels were on?

A. The schooner's was about north; I did not take notice of that; and our course was southwest, half south.

Q. Suppose the schooner to have been sailing north, and your vessel southwest, half south, how can you place the vessels on parallel courses?

A. I mean that if the schooner had kept his proper course in the opposite way that we were coming, we had passed just a cable's length between us.

Q. Is that the best answer you can give to the question?

A. That is the best I can see.

Q. Supposing the schooner after she kept off was sailing on a course north, and your vessel after you had ported was sailing southwest, half south, would not your course have taken your vessel across the stem or bow of the schooner?

A. I don't understand the meaning of it.
Q. What is your idea of a cable's length?
A. One hundred and twenty fathoms.
Q. How many feet is that?
A. I don't know.
Q. Do you mean, then, that when you had got your vessel under a ported helm, heading southwest, half south, and the schooner commenced to keep off, the vessels were a cable's length apart?

121 A. That is not what I meant by a cable's length; I mean, if the schooner had kept her course, and we had kept ours, we would have passed each other a cable length apart, beam and beam.

Q. How near did the vessels come to passing each other off beam and beam, a cable length, up to the time you changed your helm from port to starboard?
A. I don't understand it.
Q. How far, measured by the length of a cable, were the vessels apart when you changed your helm from port to starboard?
A. I don't know exactly; about a quarter of a mile. Do you mean ahead or abeam?
Q. Take it abeam.
A. I can't tell how far; when we starboarded our helm she was close by.
Q. Were you over a cable's length from her when you starboarded your helm?
A. We were a quarter of a mile apart; I can't give it by cable's lengths.
Q. How many cable's lengths are there in a quarter of a mile?
A. I don't know.
Q. Do you know how many feet or yards or rods there are in a quarter of a mile?
A. I don't know.
Q. How many feet are there in your vessel?
A. I don't know.
Q. Supposing the length of the Benefactor to have been a quarter of a cable's length long, how many lengths of the Benefactor were the vessels apart when you changed your helm from port to starboard?
A. I don't know; she was close by; a quarter of a mile.
Q. Do you know what a ship's length, in sea language, is?
A. No.
Q. Please count from the time you changed your helm from port to starboard up to the time the vessels came together.
A. I don't know.
Q. Could you count a hundred?
A. I don't know.
Q. Could you count five hundred?
A. I don't know exactly.

122 Q. At the time when you changed your wheel from port to starboard, how did the schooner bear from you?

A. About a point and a half on the port bow.
Q. How was the schooner headed?
A. I think she was about north-northwest, and she was luffing up all the time.
(Objected to as not responsive.)
Q. Before she commenced to luff, as you say, how did she head?
A. About north-northeast.
Q. Have you not already said that she was heading north?

A. She was steering north, but she had kept off.
Q. How far off do you say that she kept at any time?
A. I could not tell how much; she kept off a little.
Q. What was the furthest point that you are willing to swear to?
A. About a point and a half to two points; I can't exactly tell.
Q. A point and a half to two points from where?
A. From where she was steering before.
Q. What point of the compass do you mean by where she was steering before?
A. I calculate she was steering north before; then she fell off to north-northeast; I can't tell exactly.
Q. How near can you undertake to tell the point of the compass to which the schooner was steering either before or after she fell off, as you say?
A. I don't know the schooner's course; I guess it from the way she came.
Q. Question repeated.
A. I won't undertake to say positively; it is only my guess.
Q. What were you doing when this change was made from port to starboard? Were you looking at the compass or the schooner, or rolling your wheel?
123 A. I was tending to my steering at the wheel.
Q. Question repeated.
A. I hove my wheel over; I did nothing else.
Q. Did you keep your eye on the schooner all the time when you were putting your wheel to the starboard?
A. Yes, I did; I looked up.
Q. When you looked up and saw her, state what her distance was from you by any other standard of measurement than fractions of a mile.
A. I don't go by any fractions like that across the water.
Q. Can't you state by ship's lengths or cable's lengths or fathoms or feet, or designate any object about the place of this examination, which is the same distance from you which the schooner was at the time you changed your helm from port to starboard?
A. I can't tell.

NELS NELSON.

Sworn to before me this 29th day of March, 1875.

EDWARD L. OWEN,
U. S. Commissioner.

Mr. E. L. Owen reads deposition of John Pollock, as follows:

I reside at 28 West 33d street, New York City; I am an engineer, and have been about fourteen years; I was on board the Benefactor at the time of the collision; I had been on her about four months. It was my watch at the time of the collision; I was in the fire-room right by the engine. The first thing I heard was the bell strike to slow; that order was obeyed right away by the oiler, who was standing under the throttle valve; I saw him slow the engine; he had it done by the time I got alongside of him. Immediately after we got the other bell to stop; that bell was obeyed promptly; it was done at once; the oiler did that; I was standing by his side; he had not taken his hand off the throttle-valve from the time of the first order; the engine was stopped in
124 about two seconds after the first bell was sounded. I felt the col-

lision; the collision happened a few moments after the second bell; it was just about a few seconds.

Cross-examined:

I am now in Mr. Clyde's employ; I had been in the engine-room from the time I left New York; Charles White, the oiler, and Abraham Bell, the fireman, were with me; that is all; we have a clock in the engine-room; I think, as near as I can recollect, the collision happened at a quarter to ten in the morning. We had not had any other bells from the time of leaving New York than those I have testified to; we were carrying about 27 pounds of steam; the engine was making, I think, 58 or 60 revolutions a minute; that was not her highest rate; we make about 74; we had about the usual amount of steam; I don't remember counting the revolutions; we have no register; I have not since thought about the number of revolutions; I don't intend to swear accurately as to the number of revolutions we were making.

I recollect we were carrying less than 27 pounds of steam; not over that; the first bell was one bell, and then one right away; I got no other bells up to the time of the collision; some time after the collision we got bells to go ahead or back—I don't remember which; it might have been ten minutes after; I remember a lot of men coming around the steamer; I saw most of them; I saw the mate of the Susan Wright; I did not see him talking to our captain or mate; the Benefactor came back to New York, and left again about twelve o'clock that night; I did not go on shore; I am now on the Benefactor; Norwood, the mate, joined her some time after—we had made more than two—I can't tell you for certain when he joined; it was a long time; he remained on the Benefactor two months, I think; he was acting as mate; there was no mate, and Norwood came in the place of the old mate, who, I think, got sick and died; Norwood was taken sick and left the Benefactor; I don't know that we had any of the other crew of the Susan Wright on the Benefactor.

Redirect:.

We could not have got the engine under sternway between the time of getting the second bell and the collision; the collision happened almost immediately after the second bell.

Recross:

Our engine is low pressure; we have carried more than twenty seven pounds of steam; three pounds more; we carried thirty pounds last—about two months before the collision, and then for two months previous to the collision the highest we carried was twenty-seven; the Benefactor can run by steam alone eight knots; with sails she can run faster; with a fair wind she can run three knots faster.

Redirect:

We were running about eight knots by steam.

JOHN POLLOCK.

Subscribed and sworn to before me this 4th day of February, 1876.

EDWARD L. OWEN,
U. S. Commissioner.

We consent that the foregoing deposition be read on the trial of these causes.

Dated New York, February 4, 1876.

BEEBE, WILCOX & HOBBS,
Libellants' Proctors.

126 Mr. Owen. I am informed and believe that the captain of the Benefactor fell in some way in the hatches in Savannah, or New York, last summer, and broke his leg, and gangrene set in, and he died very suddenly—in a day or two after the accident; I have no doubt of the truth of it; I have been informed by different parties of that fact; we had not examined him before that accident occurred; I make this as a statement.

(Death of the captain admitted.)

Mr. E. L. Owen reads deposition of William H. Norwood, as follows:

I reside at 160 Washington street, at the house of Henry Shackel; I am a sea-faring man; have followed the sea for thirty-two years; everything, from a cook up to a mate; I knew the schooner Susan Wright; I joined her the 19th of January, 1875, at Galveston, Texas, as mate, bound on a voyage from thence to Matanzas, and to a port north of Hatteras in the United States. I was on board of her at the time of the collision with the Benefactor, as mate; it happened on the voyage upon which I joined her; I was forward in the saloon arranging the starboard chain before the collision; Hugh McAdams, seaman, was with me; he was helping me; there was no other person forward.

Q. When did you first notice the steamer, and where was the schooner?

A. The schooner was off Squam Beach, three or four miles off shore; I was forward, at the time, engaged in ranging the chain; on our lee bow, that is on our starboard bow, nearly ahead—our schooner was heading, at the time, about north, or north by west; I could not be positive, for I was not aft to see the compass; the wind was about west-northwest; our schooner had her four lower sails set; we had taken a pilot; we took him off Squam Beach, the southern part of it, ten or
127 fifteen minutes past eight o'clock in the morning; when I first saw the steamer, Peter Burns had the wheel of the schooner, the pilot was standing aft on the weather quarter, that is aft close to the man at the wheel; the captain was also there; McAdams was under the topgallant forecastle laying the chain; our windlass was abaft the forecastle, so that the range chain had to be under that, and that was where McAdam was.

Q. How far distant do you think the steamer was from you when you first saw her?

A. A mile, I should judge, or more

Q. What change, if any, was made in the direction of the schooner after you first saw the steamer, and before the collision?

A. Our helm was put up, and our vessel kept off rapidly; by being put up I mean put to port.

Q. Was there any change made in the course of the schooner after that and before the collision?

A. Yes; our helm was put down, causing the vessel to luff to the wind.

Q. How much did the schooner's head fall off upon the port helm above stated?

A. About three points, which would bring her heading about north-northeast.

Q. While the schooner was so heading did you notice the steamer, and, if so, how did she bear from the schooner?

A. I noticed the steamer bearing about north or north half west from the schooner on the port bow, about two points or two points and a half on the port bow.

Q. How far was the steamer from the schooner when the schooner ported her helm, as you have stated?

A. From three-quarters to seven-eighths of a mile.

A. How did you know that the helm had been put to port?

A. By the movement of the vessel—by seeing the vessel's bow paying of to the eastward.

128 Q. How long do you think the schooner continued to run on the port helm before you noticed the second change before stated?

A. From two or three minutes.

Q. How do you know that the schooner made the second change above referred to?

A. By seeing the vessel's bow swing to the wind, causing the head sails to shake.

Q. After the second change, how did the steamer bear from the schooner, and how far distant was the steamer from the schooner?

A. The steamer bore about north by west from the schooner, I should judge, which would be about a point on our starboard at the time our head sails were shaking.

Q. Where were you standing at the time when you noticed these two changes in the schooner's course?

A. I was standing forward.

Q. Did you have any conversation with the man who was with you about these changes?

A. Not up to the then present time.

Q. Have you heard the captain of your vessel say anything in regard to the navigation of his schooner, and whether or not her course was changed?

A. I have not.

Q. How did the steamer strike your vessel?

A. On her starboard quarter, about ten feet abaft the mizzen rigging, a blow angling aft.

Q. When did you first suppose there was danger of a collision between these two vessels?

A. When I saw the schooner's course change, hauling her head to the westward and across the steamer's bow—I then called Hugh McAdam from underneath the forecastle, and told him there was danger of a collision.

Q. If the schooner had continued on her port helm, or had not luffed, how would the steamer have passed her; that is to say, on which side would the steamer have passed, and at about what distance?

129 A. The steamer would have passed us on our port side, and at a distance of about two hundred or two hundred and fifty yards; she would have passed all clear of us.

Q. What damages did the schooner sustain by the collision?

A. Broke the mizzen boom, and cut our starboard quarter so that she sank in about ten or fifteen minutes.

Q. Did you pass or see the wreck at any time after the collision, and if so, how long after and how often?

A. I saw the wreck three or four times afterwards, twice in April.

Q. How much of the wreck was out of the water; state her condition as nearly as you can at these times?

A. She was laying up and down, that is her bow down and her stern three or feet above water; at this time the wreck had apparently moved in shore from the place of the collision, from one mile to two miles I should judge.

Q. Was she in a position to have been saved?

(Objected to by counsel on the ground that witness has not shown himself to have been an expert.)

A. At what time do you mean?

Q. At the time you first saw her after the collision?

(Objected to as above.)

A. I think she could have been saved.

Q. At the time when you say that she seemed to have drifted in shore from the place of the collision, was she then in a condition to have been saved?

(Same objection as above.)

A. I think so.

130 Q. How long after the collision was it that you say you saw her a mile or two further in shore from the place of the collision?

A. About fifteen days.

Cross-examined by Mr. Wilcox:

I was born in Accomac County, Virginia, about two miles from Drummond Town. I don't remember the name of the vessel I first went to sea on. I went coasting, oystering for five or six years. During this time I was on the Liberty, William F. Washington, Anna Marella, Benjamin Cox, Mary E. Hover, that is as many as I can remember in that time. I was ashore part of the time during these five or six years; I don't know how much of that time. I was doing nothing particular ashore—looking out for the interest of what I owed. I was sometimes in New York, sometimes in Baltimore, and sometimes in Virginia, wherever my time on these vessels happened to expire. I left the oystering business in 1853, I think. I was then probably 18 or 19 years of age. I was born in 1834, I believe.

My father's name was John Henry Norwood. After leaving the oystering business I went coasting, and remained coasting three years on the schooner Three Sisters of Philadelphia, the schooner Colonel Satterly, the schooner B. N. Hawkins, and two others whose names I cannot remember; the Three Sisters hailed from Philadelphia, the others from New York, with the exception of one whose name I cannot remember. I was on shore at various times during these three years, probably about one-fourth of the time. I boarded in New York at Victor Seaman's, 21 Hammond street, at Benjamin Butt's, Franklin Square, these are all; during the time I was ashore I did nothing but look for berths; after this I shipped as a sailor, and went to Glasgow in the ship John Fyfe, hailing from and belonging to New York; Dunham and

131 Dunon owned her there. I remained on her six or eight months; after that, I left her in Melbourne, Australia; there I went stevedoring for about six months. I worked for another man named Robbins. I then went to sea on the ship Live Yankee, of New York, as third mate. I remained on her probably about six months. I then shipped on the ship Judith, of New Orleans. I shipped on her at Hong Kong, China, as second mate; I remained in her four or six months. I left her at Singapore, East Indies. I then shipped in the barque Prioress, of Boston, as a seaman, and remained in her about four months, and left her in Boston. I then came to New York as a passenger, and remained there about three weeks. I stopped then at 21 Hammond street, at Victor Seaman's, I think this was in 1859; after that I shipped in the ship Indiana, of New York, for New Orleans as second mate. Frost & Co., I think, were the agents. I remained in her only a passage to New Orleans, about five weeks.

I then shipped in the ship Toulon of New York, for New York, as 2d

mate; remained in her only for a passage to New York. I remained in N. Y. about three weeks, stopping at Seaman's. I then shipped as third mate of the ship Calhoun, of New York, for Liverpool; made a voyage and back to New York in her, something over four months. I then shipped as seaman in the ship Don Quixote for San Francisco, and remained in her only to San Francisco, about five months; left her in San Francisco; there I joined a coasting schooner, Fannie Piper, and went in her up the Albion River, California, and remained in her one month. I then shipped in a coasting schooner called the Brilliant, and remained in her four or five months. I then shipped in a brig called the Pride of the Sea, of San Francisco, and remained in her seven or eight months; then I shipped as second mate on a Hanoverian barque for Otago, New Zealand, and remained in her about four months. I remained in New
132 Zealand about a year carpentering. I went from there to Sidney, New South Wales, as passenger. I shipped from there in the barque Atrivita, for Valpariaso, Chili, as carpenter; remained in her about six months. I then shipped as second mate and carpenter of the barque Sorata, trading between the ports of Adelaide and Sidney, Australia, and remained in her from four to six months, I think; then I shipped in a ship belonging to London called the Sobroan, and went to London. I remained aboard her three or four months; then I went from there to Liverpool, and from there to New York. I got to New York the first part of 1867, I think. I have been on board of not more than six or seven vessels since, sailing from New York principally; the steamer John Gibson, the schooner Ocean Wave, the brig Alexander Nichols, I think, to Galveston; then on the steamboats Diana and Henry A. Jones, from Galveston to Houston; then tug-boat Buck, in Galveston; then steamboat Stonewall; then the bark T. J. Southard; then schooner Frank Harvard; then schooner Robert Ruff, and then the Susan Wright, which was the last vessel I was on up to the time of the collision.

WILLIAM H. NORWOOD.

Further examination adjourned to 10th, at 3½ p. m.

JANUARY 10TH, 1876.

Pursuant to adjournment, parties appear.

Witness NORWOOD continues on his cross-examination:

In the John Gibson I went between Alexandria, Georgetown, Washington and New York. I was in her about three months or more. I would not be positive as to time. I joined the Ocean Wave in Jersey City, and went to Boston. I was in her about two weeks. I
133 joined the Alexander Nichols in New York, went to Galveston; was in her on her passage to Galveston only, about a month. I was in the steamboat Diana for three months as mate, and was then transferred to the Henry A. Jones, of the same line; was in her about three months and a half. I went to the Buck after leaving the Jones, and remained in her about eighteen months, off and on, as captain. I then went to the Stonewall. I was on her about fifteen months, I think, but I would not be positive as to the time in her. She sailed between Galveston, Saline Pass, and Concord. I joined the T. J. Southard in Galveston, as mate, and went to Liverpool, and was on her about two months and a half. I joined the Frank Howan in New York. B. J. Wenberg, I think, was her agent. I was on her about three months; started for Rio Grande, and, in saving the ship's crew of Cerro Nevada, which was on fire, we collided with her, and were obliged to put into Pernambuco for repairs. I took sick in Pernambuco, and went as a

passenger in the barkentine New England to New Orleans, and from there I went to Galveston, where I joined the Robert Ruff. I went to Havana; from thence I went to Cedar Keys, and from thence back to Galveston, a voyage of about six weeks, I think. I was mate. I joined the Susan Wright in Galveston; shipped by shipping commissioner as mate for the voyage on which she was lost. The next vessel I was on was the Benefactor. The crew got on board the Benefactor about three quarters of an hour, or an hour, perhaps more, after the collision; I am not positive as to the time. The Benefactor probably went a mile or more from the point of collision before she returned around. I should say it was as much as fifteen minutes before the steamer came back to the pilot-boat on which we were.

Q. Do you know why she did not put back at once?

134 (Objected to.)

A. No, sir; I should judge the Wright sank in as much as ten minutes after the collision. I will not swear that it was as much as ten minutes; I will not swear as to five minutes; I will not swear as to time.

Q Do you know whether those on the steamer knew that the Wright was sinking?

(Objected to.)

A I do not. I hailed the steamer; I sang out to the steamer that we were sinking. She was then about 300 yards from us at that time; that was the first time I hailed her; there was no one who hailed her before, that I am aware of. I don't know how the steamer bore at that time from us by compass, because I did not see the compass, but I should judge about southeast by south when I hailed her. I noticed her all the time after the collision; that was not her course all the while from the time of the collision; the steamer was rounding to and was heading between southwest and south, as near as I can come with any accuracy.

I can't tell how she bore from the time she struck until she was 300 yards away. We were picked up by a pilot-boat—I think it was the Edmund Blunt—about twelve or fifteen minutes after the collision; about a quarter of an hour after that we were taken off by the steamer. I first went to the mess-room on the Benefactor, and remained there fifteen or twenty minutes; the majority of the crew, they were all invited in by the captain of the mate; the captain spoke to the whole crew; he said, "Good evening," I think. In the mess-room we warmed ourselves and dried our clothing. The mess-room boy was there; the majority of the crew were there. Up to this time I had not spoken to any of the officers of the vessel, nothing more than what I have stated.

From the mess-room I walked around deck for only a few

135 minutes; it was too cold, my clothing was too wet; then I was invited into the pilot-house by the mate. This was the first time that any officer had spoken to me, or I to them, except as I have stated. I don't know where I left Peter Burns when I went into the pilot-house. I remained in the pilot-house twenty or thirty minutes. I do not remember that I talked with the mate about the collision. I don't know the mate's name. I think he said nothing to me about the collision, to the best of my recollection; I am positive I said nothing. I saw the second mate in the pilot-house; I had no conversation with him or he with me. While I was in the pilot-house I don't remember whether the windows were down or up. The pilot-house connected with the captain's room and the mate's room, one on one side of the house and one on the other; there was a sofa in the pilot-house. I should judge a

person lying on that sofa could see out the windows, but I am not positive as to that. The windows of the pilot-house came down within two feet six or three feet of the floor of the pilot-house; the sofa was back of the wheel, I think; ordinary sofa-place on the floor. I am not positive whether it was forward or aft of the wheel. I laid down on the sofa. From the pilot-house I went into the mate's room.

WILLIAM H. NORWOOD.

Adjourned to the 11th January, at 3½ p. m.

JANUARY 11TH, 1876.

Pursuant to adjournment parties appear.

WILLIAM H. NORWOOD resumes on his cross-examination:

I was in the mate's room probably an hour or an hour and a half; I went to sleep; I slept nearly all the time, within probably ten or fifteen minutes. During that time the mate came in once or twice; no one else came in to my knowledge. During that time I think I had
136 no conversation with any one; I don't know of any conversation. After I finished my nap I got up, I think, and came on deck. I saw the schooner's crew and several of the steamer's crew at their duties. I do not think I saw any of the officers; I might have done so. I remained there until the boat landed; at times I would go in the mess-room and warm. I think the steamer landed at about five o'clock at pier 13 North River. From the time I took my nap up to the time the vessel got to the dock, I think I had some conversations with the pilot of the schooner, but with no one else that I know of; no conversations with the crew or officers of the steamer in relation to the collision or to my being a witness. I had not been promised that my expenses would be paid, or anything else, for being a witness for either party in this case, by either party or by any one else. When the vessel landed I went to my boarding-house direct, in company with no one; the whole crew went under Hager's shipping-office to take a drink; I went with them. I was in company with some one at that time, but did not remain in company with them up to the time I reached my boarding-house; I left the crew there and went alone to my boarding-house. None of the officers or crew of the steamer, to my recollection, took a drink with me under Hager's; I went with our schooner's crew from the steamer to the place under Hager's. I don't remember on the corner of what street Hager's is except that it is in West street. My boarding-house was in Front street; it was kept by George Elliott; the numb r is 280. I had been there once before. I remained at Elliott's a week or more. During that time I had no conversation with any one about this collision, or about my being a witness in this case, except that a pilot commissioner spoke to me; I don't know his name. I had this conversation with the pilot commissioner at Mr. Avery's, on Front street; the number I don't know. I think the pilot commissioner sent for me; he did not at the time tell me whom he represented. I won't swear
137 positively that he did or did not. I was talking with him probably fifteen or twenty minutes. I told him what I knew about the collision; he did not tell me that he knew anything of the collision. I never knew this pilot commissioner's name; I never saw him before and have not seen him since.

Q. Did you give him a written statement?

A. I did.

Q. Who wrote it?

A. I did.

Q. When and where did you write it?

A, In the pilot commissioner's office; I don't remember the day nor date; the pilot commissioner's office is over Avery's store; Avery's store is a ship chandler's; they fit out pilots-boats.

Q. Then after making a verbal statement to the pilot commissioner, did you give him a written statement?

A. I made no statement until I gave the written one; the conversation I had with the pilot commissioner in Avery's store was as follows: he asked me if I would give him a statement, and I said I would; that is about all I recollect, and I think if more had been said, I would recollect it.

Q. Then I understand you to swear positively that this pilot commissioner, up to the time you met him at Avery's, was a perfect stranger to you, and that he then simply requested you, without any further conversation, to give him a statement as to this collision, and that you promised you would?

A. Yes, sir; I did not promise him I would, but I went immediately and did it.

Q. Was that before or after you had been to this office (counsel refers to office of Beebe, Wilcox & Hobbs, 68 Wall street)?

A. I believe it was before I came to this office—I won't be positive; I think it was before.

Q. You then went up to the pilot commissioner's office and made a statement concerning this collision in your own handwriting, did you?

A. I did.

138 Q. Was or not any one present at the time you wrote this statement?

A. No one, except the pilot commissioner, that I remember.

Q. Did you have any conversation with the pilot commissioner before you made the written statement?

A. None, except what I have stated, that I remember; I had no conversation with him afterwards, I think.

Q. Did you have any conversation with any one while you were in the pilot office concerning the collision?

A. No, sir.

Q. What was *down* with that written statement?

A. I don't know; I left it on the desk; I did not see any one take it; no one to my knowledge requested me to leave it on the desk; I left it on the desk because I was requested to make it, and being of no interest to me, I did not want it.

Q. Did that statement agree with what you have testified to herein? (Objected to.)

A. Yes, sir.

Q. Up to that time and from the time of the collision, had you received from any one any money or the promise of any money from any one?

A. I received five dollars from Captain Mount, but whether it was before or after the time I left this statement on the desk, I don't know; that is all I received; I don't know who told me that the pilot commissioner wanted to see me; it was in a saloon on South street, near where I boarded; I don't know the number; the man was a stranger; I have never seen the man since to my recollection.

Q. What did he state to you?

A. That the pilot commissioner wanted to see me; I think that is all; he did not tell me where the pilot commissioner wanted to see me; he did not tell me the pilot commissioner's name; within fifteen or

139 twenty minutes after this I went to Avery's; I misunderstood you—he did tell me where the pilot commissioner wanted to see me; he told me at the pilot commissioner's; this gentleman went with me to the pilot commissioner's and introduced me to him; I can't describe the person who went with me to the pilot commissioner's; he did not tell me his name or who he was; I don't remember if I took a drink with him or not; I have never been to the pilot commissioner's office since to my recollection; the person who was introduced to me at Avery's might have been a pilot; I cannot tell how long after the collision it was that I was introduced to the pilot commissioner; I have not seen the person who took me to Avery's since, to know him; I do not remember when, after that, I had a conversation about this collision, or about making a statement about this collision; I might have had such conversation after that, but I do not remember when it was.

WILLIAM H. NORWOOD.

Adjourned to January 12th, 1876, at 3.30 p. m.

JANUARY 12TH, 1876.

Pursuant to adjournment parties appear.

WILLIAM H. NORWOOD resumes his cross-examination:

I remained ashore after the collision until I shipped—I think about two weeks; during that time I came to the office of Beebe, Wilcox & Hobbs, 68 Wall street; I don't know whether it was after I went to Avery's or before that I came to their office; I don't know that some of the crew of the schooner were making statements in their office.

Q. Do you remember of my reading to you the written statements of some of the crew of the schooner?

A. I don't think you read any statement; I remember you reading from a protest or something.

140 Q. Did you make any statement to me at this time concerning the collision?

A. I attempted to do so.

Q. Did not your statement then agree substantially with the statement in the protest?

(Objected to.)

A. It did not.

Q. In what did it differ, if at all?

(Objected to.)

A. I can't remember the protest exactly, therefore I can't say what difference there is.

Q. Did you make a written statement in the office of Beebe, Wilcox & Hobbs?

A. I did—that is, I attempted to make one.

Q. Did you succeed at it?

A. I did not give a full statement; I named some of the most prominent points.

Q. Why did not you finish it?

(Objected to.)

A. Because I didn't think it was necessary for me to do so at that time.

Q. Why did not you think it necessary?

(Objected to.)

A. Nothing more than just my judgment.

Q. Then you refused to make a statement?

A. To yourself alone I did, but not publicly.
Q. You said you would make one for me before a notary public, did you not?
A. I did.
Q. Thereupon I called a notary in and you went into a private room alone with the notary, did you not?
A. I went into a room with the notary and commenced my statement.
Q. Was not the notary's name O'Hare?
A. I don't know.
141 Q. And your statement was then completed before him, was it not?
A. I think not, sir.
Q. Did you not complete one statement and have a copy made at that time by and before the notary?
A. I had a copy made of that portion of the statement which I gave.
Q. And when it was made you refused to sign and swear to it, did not you?
A. I did not.
Q. Did you sign and swear to it?
A. I did not.
Q. What, if anything, did you state to the notary about signing and swearing to it?
A. I stated nothing whatsoever to my knowledge.
Q. Did you state to the notary that you would take statements with you, and come back and sign and swear to them?
A. I think not; I think I told Mr. Wilcox.
Q. Did you ever come back and sign and swear to them?
A. I did not.
Q. Why didn't you come back and sign and swear to them, as you had promised Mr. Wilcox?
A. Because I thought it would be time enough to give statements when the case was tried.
Q. Were you not requested to be examined as a witness in this case by me?
A. Not that I am aware of.
Q. Whereabout are the statements which you made before the notary?
A. I don't know where they are; I don't remember where they are.
Q. When did you last see them?
A. I don't remember that.
Q. What did you do with them—did you give them to any one?
A. I don't know that I did.
Q. Did you ever destroy them?
A. No, sir; not to my knowledge.
142 Q. Don't you know now of ever giving those statements to any person?
A. I don't remember; I might have done so.
Q. Have you been shown any statement concerning this collision, at or previous to this examination?
A. I have seen my own statement.
Q. Where did you see that?
A. I saw that within a few days.
Q. In whose possession?
A. In the possession of Owen & Gray.
Q. When and where was that statement made?

A. In Mr. Owen's office; the time I don't recollect.
Q. How long ago?
A. Several months ago.
Q. How long after the collision?
A. Within three or four weeks, I think, but am not positive.
Q. Who was that statement made before?
A. Mr. Owen.
Q. Was it sworn to?
A. I think so.
Q. At whose request did you make that statement.
A. I believe at the request of Messrs. Johnson & Higgins.
Q. Did any one else request you to make it?
A. Not that I am aware of; they might have done.
Q. Did you go to Johnson & Higgins' office?
A. Yes, sir.
Q. At whose request did you go there?
A. The request of Mr. Loudon; I met him, I think, on West street, somewhere in the vicinity of Hager's office—not in Hager's office; I met Loudon within two or three days after the collision; I had never seen him before to my recollection; I met him on the street; I think he introduced himself by asking me if I was mate of the schooner Susan Wright. I said I was; he asked me if I would make a statement; I said I would before
143 legal authorities; he did not tell me whom he represented; I think he told me to go to Johnson & Higgins; I won't swear whether he went with me or not; we walked up the street together, but I don't remember whether he came to Johnson & Higgins' with me or not; I came to Johnson & Higgins' that same day; I am not positive if I introduced myself to Johnson & Higgins; I think some one in Johnson & Higgins' office asked me if I was mate of that vessel, the Susan Wright. I think that was before I spoke a word; I think they asked me if I would make a true statement of that collision; I told them I would to the best of my ability; I don't recollect much further conversation. I made a statement in their office; I don't know who wrote the statement; it was written; I don't remember whether I swore to it or not; when I first met Loudon, I don't know whether it was before or after I had been to the office of Beebe, Wilcox & Hobbs; I think I left the statement with Johnson & Higgins. I don't know how long it was after that that I went to the office of Mr. Owen and made a statement there; it might have been a week, or two or three. I think I had not been to sea then.

Q. Up to the time of making your statement at Mr. Owen's office, had you received any money, or the promise of any money, from any person, except the five dollars you have stated you received from Captain Mount?
A. I received no promises, but I received some money.
Q. Who from?
A. Mr. Loudon—a small sum; after making the statement to Mr. Owen, I remained around a few days, I think, and then shipped on the Benefactor as mate; I have been in her up to within about five months ago; since then I have been in no vessel; I was taken sick and went home; since then I have been doing nothing; I went home to
144 Virginia when I was taken sick; I came back to New York about the 16th of December; Loudon paid me this money, I think, two weeks or more previous to my joining the Benefactor; I think I had made my statement to Johnson & Higgins; I don't remember if I had made it to Mr. Owen. Loudon did not state whom he represented when

he gave the money. I don't remember how often after making my statement to Johnson & Higgins I saw Loudon; it might have been half a dozen times, it might not have been more than three. I think I met him on the street on each occasion. I did not meet him in any place. I did not know where the office of the Benefactor was then, or the office of the Clyde line of steamers.

Q. How did you come to ship on the Benefactor?

A. I heard the mate of the Benefactor had taken sick, and I applied for a berth, and got it. I don't know who told me that the mate was taken sick; I think I heard it accidentally; I think it was after I met Loudon, two or three weeks, it might have been. Loudon did not tell me; I applied to the captain of the Benefactor; I had not seen the captain nor any of the officers of the Benefactor since leaving her after the collision.

Q. Have your expenses in New York, since the collision, been defrayed by any person; and, if so, by whom?

A. No, sir; not by any one. They have not been promised; I don't remember whether it was before or after I went to the pilot office that I saw Loudon.

Q. Are you quite positive that you did not converse with the captain of the Benefactor or hear a conversation after dinner on the steamer on the day of the collision, in relation to the collision?

A. I might have, but I don't recollect.

Q. Did you ever have this conversation with any one on the steamer and in the presence of any of its officers "that you were glad that the schooner had gone down"?

145 A. I don't recollect of any such conversation; I made use of no such expressions—nor in substance. I swear positively that I said no such thing, nor in substance. I don't recollect of any such words at all.

Q. Did not the captain request you to go to his boarding house upon arrival after the collision; I mean Captain Mount?

A. No. sir; not personally; he requested the whole crew.

Q. Why did you not go?

A. Because I did not care to go to a strange place where I had never been before. I did not tell Captain Mount where I was going. At that time my boarding place owed me some money, as much as would pay my board. I think I remained at that boarding place all the time until I shipped. The steamer Benefactor was about a mile from the schooner when I first saw her. This was from four to six minutes before the collision. I was standing forward on the starboard of the schooner when I first saw the steamer, about ten or twelve feet abaft the stern, and about four or five feet from the rail. The jib hung to starboard; it was a whole sail, I think. I did not notice the course of the Benefactor particularly. She was going south, or south by west, as near as I can fix it. The schooner's course then was north, or north by west. The schooner was sailing between five and six knots; the steamer was sailing seven knots, I should judge. The schooner was on the port tack; the wind on the port side; the booms off to starboard. We were pretty close hauled, as she ordinarily sailed with the wind as it was then. When I first saw the steamer I should judge she bore north or north half west, or thereabouts. From where I was standing I saw the steamer over the starboard bow, nearly ahead, a very little on our starboard. I saw the steamer after I first saw her.

Q. Did you observe at any time any change in her bearings or course after you first saw her?

146 A. I did.

Q. How long was it after you first saw her?

A. I should think about a minute. I then noticed the steamer hauling in more to the westward, it seemed to me. She bore then nearly north by west, a little on our port bow.

Q. If the vessels at that time had kept on their courses, in your opinion, would there have been a collision?

A. I think not.

Q. How was the schooner heading when you noticed the change in the steamer's course?

A. I could not tell. I saw our schooner's bow paying off. I observed the steamer's change first, I think; in a few seconds after that the schooner changed her course. The vessels were then, I don't think, more than three-quarters or seven eighths of a mile apart. The best of my judgment is that they were then not more than three-quarters of a mile apart. I don't think they were less. I should say that the schooner's head payed off two or three points on this change, which would bring her course north by east or north-northeast.

Q. Suppose the schooner had not thus payed off, in your opinion, would there have been a collision?

A. I think not. The steamer would have passed inside to the port of us, probably a hundred yards or so. I can't be accurate.

Q. How far would the steamer have passed to port after the schooner had payed off, as you have stated, if both the vessels had filled their canvases?

A. Probably two hundred to two hundred and fifty yards.

Q. Did you notice any change in the course of either vessel after the changes I have referred to?

A. I did.

Q. What was the first change?

A. I saw our schooner's bow coming to the westward. I was standing then on the same side of our vessel, within a few feet of where I was before. When I first noticed this change the steamer bore
147 probably north half west from us, coming about head and head. She was then, probably, less than a half a mile from us; in my best judgment she was half a mile from us; almost immediately I noticed a change in the course of the steamer. When I noticed this change in the steamer our schooner's bow might have come to a point and a half or two points; the sails barely drawing; the luff of the sails shaking. I judged that the steamer, by her wake, was rapidly keeping off to the eastward, probably had kept off to south southeast, or may be more.

Q. Did the vessels hold those positions and courses to the time of the collision, or not?

A. Our vessel continued swinging; I can't say about the steamer. When the vessels came together I was going up the gangway steps, on the lee side. When I left my position forward to go to the gangway steps the vessels were a length or so apart. I noticed the after sail of the steamer coming down as I was running aft.

Q. Did you notice any change in the speed of either vessel up to the time of the collision?

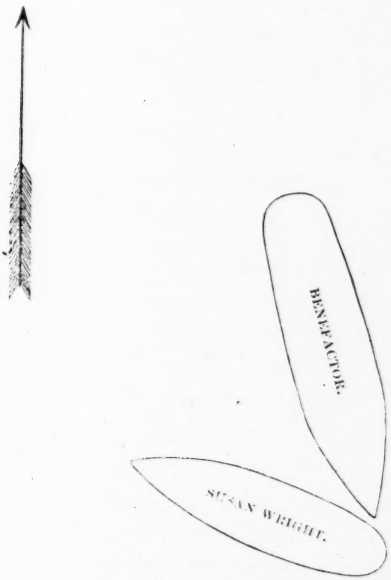
A. I noticed the change in the speed of our schooner. I did not notice any change in the speed of the steamer. Our sails were shaking when the vessels came together. I noticed considerable change in the speed of our schooner; she was going at the rate of two miles and a

half an hour, I should judge, when the collision took place. She shook and lost headway.

Q. From the time you first noticed the swing of your vessel to the westward, up to the moment of the collision, how many points had her head changed?

A. Four or five points, I should think. She had about stopped swinging at the time of the collission. If the schooner had gone ahead thirty or thirty-five feet further, or if the steamer had paid off that distance further, in my best judgment the collision would have been avoided. I saw the vessels come in contact.

148

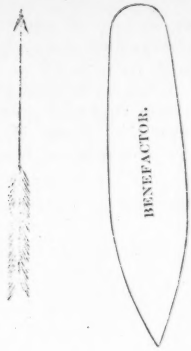


The vessels came together about as shown in the above diagram. I can't tell if the rudder post was left in the schooner after the collision or not.

Q. Did I ask you to sign a protest as to this collision?

A. I don't remember.

149



The above diagram shows the position and direction of the vessels just as the Susan Wright commenced her swing to westward.

WILLIAM H. NORWOOD.

Subscribed and sworn to before me this 13th day of January, 1876.

EDWARD L. OWEN,

U. S. Commissioner for the Southern District of New York.

150 CHARLES MCNAMEE, being sworn for claimants, testified as follows:

Q. What is your age?

A. 33 years of age, sir.

Q. What is your business?

A. Pilot, sir.

Q. How long have you been a pilot?

A. A little over a year, sir; about thirteen months; nearly thirteen months.

Q. Do you hold a license?

A. Yes, sir.

Q. What branch or class of pilots do you belong to?

A. New York pilots.
Q. One of the New York pilots?
A. Yes, sir.
Q. Were you pilot on board of the Susan Wright at the time of the collision with the Benefactor?
A. Yes, sir.
Q. How long had you been pilot previous to that time?
A. I had held my license about 20 or 25 days.
Q. Before that time?
A. Yes, sir.
Q. How long before you took your license had you been accustomed to pilot vessels?
A. No, sir; excepting our own boat; I piloted our own boat up and down.
Q. What had been your business previous to the time you became a pilot?
A. Going to sea.
Q. A sailor?
A. Yes, sir.
Q. Were you ever master or mate?
A. No, sir.
Q. What class of vessels did you go to sea in?
A. Well, I went to sea in pretty much all classes of vessels.
Q. When you took your license, were you examined as a pilot?
A. Yes, sir.
Q. Before what officers?
A. I was examined before the Board of Pilot Commissioners.
Q. About what hour in the morning did you join the schooner?
A. About half-past 7, sir.
Q. Where away was she about that time?
A. She was just a little to to the northward of Barnegat.
151 Q. How was the wind?
A. The wind was west northwest.
Q. How was it at the time *time* of the collision?
A. It was about west northwest or northwest by west, baffling; sometimes west northwest and sometimes northwest by west.
Q. How strong?
A. A very strong breeze.
Q. How fast were you sailing?
A. I suppose the schooner was sailing 7 knots.
Q. Did you see this steamer?
A. Yes, sir.
Q. Where were you at the time when you first saw this steamer?
A. I was standing aft.
Q. Near the wheel?
A. Yes, sir.
Q. On the port or starboard quarter?
A. On the port quarter.
Q. How far away do you think the steamer was at that time?
A. When I first saw the steamer she was about 6 or 7 miles away.
Q. How did she bear at that time from you with reference to your bows?
A. About three points under our lee bow—on the starboard bow.
Q. Who else was near by you on the quarter at that time?
A. The captain was on deck at the time.
Q. Who was at the wheel?

A. There was a man named Burns at the wheel.

Q. When did you next observe the steamer?

A. I next observed the steamer when she was about within a quarter of a mile of us; me and the captain was on deck, walking back and forward on the deck, and we stopped and looked under the boom and saw the steamer was coming rather close.

Q. What did you do then?

A. I told the man at the wheel to put his wheel hard aport, and I went and helped him to put it to port.

152 Q. How much do you think you fell off on that port helm?

A. We fell off about two points, I guess.

Q. What then occurred on your vessel, in regard to the wheel?

A. The captain, he came and took the wheel out of my hand and put it to starboard; he took the wheel right out of my hands.

Q. Did you have hold of the wheel when he took it from you?

A. Yes, sir; me and the man Burns had hold of the wheel.

Q. Holding it aport?

A. Yes, sir; holding it to port.

Q. Did he use any force to take the wheel away from you?

A. No, sir; he didn't use any force; he just came and took the wheel out of my hands; no force was used.

Q. How much did he put it to starboard, if any, do you think?

A. He must have put it to starboard, because the schooner came right up head to the wind, with her sails all shaking.

Q. How did the steamer bear from you at that time when you were shaking in the wind?

A. I suppose she bore about north by east.

Q. How many points from either bow?

A. That would bring her—the steamer ported before I did and she hauled to the westward; that brought her bow, as she was going along to the windward, to the west of us, but when he starboarded our helm, that brought her to the east of us.

Q. You observed the steamer had ported her wheel?

A. Yes, sir.

Q. What time did she port in reference to the time that you ported yours?

A. Before I ported mine.

Q. Did you notice whether she swung off any under that port wheel?

153 A. No, sir; she didn't swing off; she came up to the wind; she came up to the westward.

Q. That would be pointing away from you?

A. Yes, sir.

Q. Now, at the time you noticed your vessel, after the captain had put your wheel to the starboard, so she had come up to the wind, and was shaking in the wind, how did the steamer bear from you?

A. About as near as I can come to it, about north by east.

Q. Under your starboard or port?

A. On our starboard side.

Q. How did she seem to be heading—towards your stern?

A. The steamer was heading about southwest by west.

Q. If the vessel had kept on that way, how would she have struck you?

A. If she had kept on that way she would most likely have hit us and carried away all our headgear, or may possibly have gone across our bow.

Q. After the captain had starboarded your wheel and your vessel was shaking, did you see any movement on the steamer?

A. Yes, sir; the steamer starboarded her wheel.

Q. What effect had that on the steamer?

A. That payed him off some more to the eastward or south'ard.

Q. How far do you think the steamer was from you at that time—how near was she to you?

A. I guess she was within about four lengths of the schooner.

Q. Had the schooner lost any headway by luffing?

A. Yes, sir.

Q. How much do you think? How fast was she going, do you think, after she came up into the wind?

A. After she came head to the wind I don't suppose she was going one knot. She came right up, head to the wind, and lost her
154 headway. A vessel will always lose her headway when she comes up that way.

Q. If both vessels had kept their courses after you ported, and the steamer ported, about how far would they have passed from each other, abeam. when they began to pass abeam?

A. About 40 or 50 feet.

Q. Which side?

A. On the port side.

Q. Port to port?

A. Yes, sir.

Q. Did you apprehend at that time any danger of collision?

A. No, sir.

Q. When did you first apprehend danger of collision?

A. When the wheel was put to starboard, and brought us up head to the wind. We had lost all way of our vessel then.

Q. After the collision did you notice how the steamer—what she did, which way she went?

A. Yes, sir; she went right down to the southward; kept off to th eastward.

Q. And rounded to and come back?

A. Yes, sir; she rounded to and came back again.

Q. And you were taken off? You went aboard of the steamer, or did you go aboard of the pilot boat?

A. I went aboard of the pilot boat first.

Q. Did you remain and come up in the pilot boat?

A. No, sir; I came up in the steamer.

Q. Did you have any conversation with the officers or men on the steamer coming up, about the collision?

A. No, sir.

Q. After you arrived in New York, where did you go?

A. I went to the office.

Q. What office do you mean?

A. The pilot office.

Q. How soon after you arrived up to the city was that?

A. About an hour and a half.

Q. The same day?

A. Yes, sir; the same day.

Q. What did you go there for?

A. I went there to see if any of my partners was there.

155 Q. Was there any inquiry made of you, at that time, about the collision by the pilot commissioners?

A. No, sir.

Q. By any one there?

A. No, sir; not that afternoon or evening.

Q. Was there at any time?

A. I went down the next morning to the pilot commissioners' office, and made a report of it.

Q. Up to that time had you had any conversation with any officer or hand in relation to the collision—any of the officers or men on board of the Benefactor?

A. No, sir; not that I remember of. Coming up I had a little talk with the captain, but I don't remember what was said. I didn't take much notice of what was said.

Q. Have you ever had any conversation with Capt. Mount with regard to his taking the wheel from you?

A. No, sir.

Cross examined by Mr. BENEDICT:

Q. When you observed the steamer the second time, when you say you looked under the boom and saw her, how did she bear from you then?

A. She bore near about north by east, or north-northeast. I didn't look particularly, sir.

Q. Which way was your vessel heading?

A. North by west, sir.

Q. I think you said you saw she was coming pretty close, and yet you now say she was bearing the same as when you first saw her?

A. When I looked under the boom I said I seen her, and I said she was coming rather close.

Q. Did she bear differently then from what she did before, or just the same?

A. No, sir; she bore differently.

Q. How did she bear when you first saw her?

A. Bearing along about north-northeast.

Q. How the second time?

A. About north by east, as near as I can come to it.

156 Q. Came up one point nearer?

A. Yes, sir; hauled to the westward more.

Q. At that time, as I understand it, she bore so that you thought that if they both kept on the vessels would come together?

A. Yes, sir.

Q. You came to the conclusion that there would be a collision, and therefore you put your wheel to port, as you say?

A. Yes, sir.

Q. And you think now that if you had not made that change the vessels would have come together?

A. Yes, sir.

Q. Where was the captain standing when you saw him come; where did he come from when he took the wheel out of your hand?

A. He came down off the break of the quarter deck.

Q. How far away?

A. About six or seven feet, sir.

Q. Did he come quick?

A. Yes, sir.

Q. Did he say anything?

A. No, sir; he didn't say nothing that I know of; he come and took hold of the wheel right out of my hand.

Q. Which side of the wheel were you standing?

A. I was on the port side of the wheel.
Q. Which way did the captain turn the wheel?
A. He turned the wheel to starboard.
Q. To the right?
A. Yes, sir; I put the wheel to port, and he rolled the wheel toward the starboard side of the boat.
Q. He rolled the wheel toward the port side of the schooner?
A. No, sir; that is putting the helm to starboard.
Q. I noticed that you said he must have put it to starboard. Why did you say that?
A. I did not say that he must have put it to starboard. I say that I put the wheel to port, and he took hold of the wheel and put it to starboard.
Q. (Repeated.)
157 A. If he didn't put it to starboard, the vessel would not have come up in the wind.
Q. You only know he must have put it to starboard because otherwise the vessels would not have come up in the wind?
A. Yes, sir; I know the vessel would not have come up in the wind without the wheel being put to starboard.
Q. And you say that you think that if the wheel had not been put to starboard that the vessels would have gone apart forty or fifty feet?
A. Yes, sir.
Q. Didn't you tell us yesterday afternoon that they wouldn't have gone apart more than twenty-five or thirty feet?
A. No, sir; I told you over thirty feet.
Q. Didn't you say not over twenty-five or thirty feet?
A. No, sir; not to my recollection. I said they would go over thirty feet apart.
Q. Were you looking at the steamer when you say the captain came and took the wheel?
A. Yes, sir.
Q. How was the steamer bearing then?
A. She was bearing near between north and north by east. I didn't take particular notice how she was bearing.
Q. She didn't change her bearing at all?
A. Yes, sir; she changed her bearing.
Q. Didn't you just say that when you saw her a quarter of a mile off she bore north by east?
A. She bore north northeast when I first saw her, and north by east when I saw her a quarter of a mile off.
Q. When you first saw her six or seven miles off, she bore north-northeast?
A. Yes, sir.
Q. And afterwards, when she came up to within a quarter of a mile, you say she bore north by east?
A. Yes, sir.
Q. And you now saw that when the captain put the wheel to starboard she bore north-northeast?
158 A. No, sir. I say she was bearing between north and north by east. I didn't take particular notice how she was bearing.
Q. Did you take particular notice how she was heading?
A. She looked to me to be heading along about south-southwest, or southwest by south; she was heading in for the beach.
Q. Did you notice any change in her heading?
A. Yes, sir.

Q. How had she been heading before?

A. Heading down about south-southwest; maybe a little to the westward of it. I noticed her alter her course and haul up more for the beach.

Q. Then you think she changed her course about a point?

A. Yes, near about a point.

Q. At the time that you say that the captain came to take the wheel, how far away did you say the steamer then was?

A. She was about, I suppose, between three and four lengths off the schooner.

Q. How long do you call the schooner?

A. I don't know, sir; I suppose she is about 100 or 125 feet long.

Q. How do you say that the wheel was at the time that the captain took it out of your hand?

A. It was to port.

Q. How much to port?

A. The wheel was nearly hard down; nearly hard aport.

Q. How much do you say that the head of your vessel had fallen off before that—under that port helm?

A. About two points or two points and a half.

Q. You put your wheel to port, as I understand you, when you saw the steamer a quarter of a mile off?

A. Yes, sir.

Q. You say that you don't remember having any talk with any of the officers of the Benefactor about the collision, coming up?

159 A. I was talking to the captain, but I don't remember what was said; I didn't take no particular notice of it.

Q. Didn't the captain of the Benefactor ask you about the collision?

A. Yes, sir; he asked me about it.

Q. And you told him, didn't you?

A. Yes, sir.

Q. Did he take your name?

A. Yes, sir.

Q. Did he take your address?

A. No, sir.

Q. He asked you whether you was a Sandy Hook pilot, didn't he?

A. Yes, sir.

Q. I understand that from the time when you saw the steamer six or seven miles away, as you say, until the time when you saw her a quarter of a mile away, your vessel held her course steady?

A. No, sir; she did not hold a steady course.

Q. How was she?

A. Sometimes north by west, and sometimes north.

Q. She was full and by?

A. Yes, sir.

Q. Just as close to the wind all the while as she could be?

A. Yes, sir.

Q. Was the wind what you call a baffling wind?

A. Yes, sir.

By Mr. OWEN:

Q. At the time the captain took the wheel and put it astarboard, was that proper navigation?

(Objected to; not allowed.)

By the COURT:

Q. When the captain took hold of the wheel, where did he take hold of it?

A. On the port side.

Q. On the same side you were?

A. Yes, sir.

Q. Was your wheel rolling at the time he took hold of it?

A. No; the wheel was steady. I had hold of the wheel, and the man that was there had hold of the wheel, too; he and I had hold of it at the same time.

Q. And it was steady?

A. Yes, sir; steady to port.

160 By Mr. OWEN:

Q. You didn't assist them in putting it to starboard at all?

A. No, sir.

By Mr. BENEDICT:

Q. Where were you standing the time the vessels came together—at the time of the blow?

A. Right at the break of the quarter deck.

Q. On which side?

A. On the port side.

By Mr. OWEN:

Q. Where was the break of the quarter deck?

A. What they call the break of the quarter deck was about four or five feet from the wheel.

Q. Forward?

A. Yes, sir; forward of the wheel.

By the COURT:

Q. How much?

A. About two or three feet.

By Mr. BENEDICT:

Q. Have you ever seen the mate of the Susan E. Wright—Norwood—since that collision?

A. Two days after, I did.

Q. That is the only time?

A. That is the only time, sir. I never saw him since.

Q. Do you know of his being sent for by any of the pilot commissioners?

A. No, sir.

Q. Did you tell any of the pilot commissioners who he was, or what the name of the mate was, or where he was to be found?

A. No, sir.

By Mr. OWEN:

Q. Did you ever see Peter Burns, the man at the wheel, after the collision?

A. Yes, sir; I seen him and Norwood, both together, two days afterward.

Q. Have you ever seen him since?

A. No, sir; he and Norwood were both together up to Mr. Avery's, where our office is.

161 By the COURT:

Q. Do you know the man that was at the wheel of the steamer?

A. No, sir.

Q. Never knew him?

A. No, sir.

Q. Did you know the mate of the steamer?

A. I didn't know anybody on board the steamer at all.

By Mr. BENEDICT:

Q. How did Burns and Norwood come to be at the office?

A. I asked Norwood to come there to give me a statement to give to the commissioners.

Q. Didn't you just say that you didn't know about Norwood's being sent to the pilot commissioners?

A. No; the commissioners didn't want to see him.

Q. You did it on your own account?

A. Yes, sir.

Q. Nobody made such a suggestion to you?

A. No, sir; I asked him to make out a statement for me to hand in to the commissioners

Q. Did you go and hunt Norwood up?

A. No, sir; I didn't hunt him up at all; I happened to meet him over there in the back part of our office, in Front street. There is an entrance to our office from Front street.

Q. You happened to meet him there?

A. Yes; me and another pilot was standing together there talking, and Norwood and Burns came along; I believe they were stopping in one of them houses in Front street.

Q. Did you give Burns your card?

A. No, sir; not that I remember; I don't remember of ever giving him a card.

Q. You went with Burns and Norwood, didn't you, after you landed, and took a drink?

A. Yes, sir; the whole crew went in along with us; the whole crew went in together.

162 Q. When you came out from there, didn't you give Burns your card?

A. No, sir; not that I remember; I don't remember giving him my card; I might possibly, but I don't remember it.

Q. Didn't you ask Norwood and Pete Burns and McAdam in to take a drink separate from the rest?

A. No, sir; I asked the whole crew in.

Q. Didn't you take those three in first, and didn't the rest come in afterwards?

A. I asked them three, and told them to ask the rest because I didn't know anybody of the crew except Burns and the mate—that was, to call them by name.

Q. Do you know anything about where Burns is now?

A. No, sir; I have never seen nor heard tell of him from the time I seen him at our office.

Q. Did you ever present your bill for pilotage to Captain Mount?

A. No, sir.

Q. You never asked him for your money?

A. No, sir.

Q. Didn't you ask Captain Mount to sign your bill?

A. No, sir.

Q. Didn't present your bill to him at all?
A. No, sir.
Q. Never made out any bill?
A. No, sir; never made out a bill.

(Claimants rest, with exception of depositions of Paul Watts, Sylvanus Bartlett, and Emanuel Joseph, to be taken within 30 days from the date of the commencement of this trial, February 18th, 1876.)

163 Evidence for libellants resumed.

WILLIAM H. MOUNT, being recalled, testified as follows:

Q. Did the pilot McNamee present his bill to you?
A. Just before we came off the steamer he asked me to sign his bill, and I told him the vessel was sunk and I would sign no more bills for her.
Q. Did you see the pilot give Burns his card?
A. Yes, sir; I did about the time there after they came out of that place. I was talking with Mr. Hager to find them a boarding-house, and when I came out I saw the pilot hand Peter Burns his card.
Q. How long would it take on your vessel to get your wheel over from being nearly hard aport, over to hard astarboard, with such a wind as you had that day?
A. We had a screw-wheel, and it worked rather slow; I should judge it would take from one to two minutes; the oil was stiff in it, and the weather was cold, and it hadn't been cleaned for some days, which made it longer than if it had been right clean.
Q. Do you know who Mr. Lowden is?
A. No, sir; I never saw him that I know of.

HENRY WAMKE, being sworn for the libellants, testified as follows:

Q. Where do you reside?
A. In Liberty street, 131.
Q. Do you know William H. Norwood, the former mate of the Susan E. Wright?
A. Yes, sir.
Q. In the month of March, 1875, what vessel were you attached to?
A. The Gulf Stream.
Q. A steamer?
A. Yes, sir.
Q. Belonging to what line?
A. Clyde's line.
Q. Was Norwood aboard at that time?
A. Yes sir.

164 Q. And in what capacity? What did he do on board?
A. He was steering the ship, and working a little bit around the same as the rest of us; generally he was steering the ship.
Q. What did they call him aboard?
A. We used to call him quartermaster.
Q. You remember the collision between the Benefactor and the Susan E. Wright?
A. Yes, sir; I heard about it.
Q. How long after that collision did Norwood come on to the Gulf Stream?
A. It was only a few days after that; I couldn't say how many days exactly.
Q. Where did the Gulf Stream run?

A. She ran to Wilmington.
Q. From New York to Wilmington, North Carolina?
A. Yes, sir.
Q. How long was Norwood on board?
A. Only one trip; it took generally 13 days to a trip.
Q. Do you know where he went from there?
A. Yes, sir; he went from there in the Benefactor as mate.
Q. Do you know Pete Burns?
A. Yes, sir; he was on board there, too; he didn't stay long, though.
Q. Did he join at the same time that Norwood did?
A. Yes, sir.
Q. Why didn't he go in the Gulf Stream?
A. I don't know; we were bound out that night, and it commenced snowing and we couldn't get out, and he went on shore again, and he gave me his clothes to take care of.
Q. His clothes?
A. Yes, sir; he didn't come, and he told me that if he didn't come to give the clothes to the mate, Norwood; to give them to him if he didn't come back.
Q. Did you give them to Norwood?
A. Yes, sir; I gave them to Norwood.
(Objected to as immaterial.)

165 Cross-examined:

Q. When did you join the Gulf Stream?
A. I joined her the week before Christmas, I believe.
Q. This last Christmas?
A. No, sir; Christmas a year ago.
Q. 1874?
A. Yes, sir.
Q. How long did you continue connected with that vessel?
A. I was in her up till May of this year; last summer, I mean.
Q. Where did you go then?
A. Then I went on the Montgomery down to Florida.
Q. What line was that?
A. It was a new line that had just started then; I couldn't say what line it was.
Q. How came you to leave the Gulf Stream?
A. Well, I liked the other boat better and I went in her.
Q. Did you have any dispute with any of the officers or men on the Gulf Stream?
A. No, sir.
Q. Didn't they discharge you?
A. No, sir.
Q. How long did you sail with Norwood, did you say?
A. Only one trip.
Q. From here down to ?
A. Down to Wilmington.
Q. And you never saw Peter Burns except on that occasion you spoke of?
A. That is all, sir.
Q. Did you ever see Norwood before meeting him on your vessel?
A. No, sir; never did.

Redirect:

Q. Do you know where Norwood is now?

A. On board the Tybee.
Q. On what line?
A. Clyde's line, too.
Q. When did he join the Tybee?
A. That is about 14 days ago.

166 JOHN O'HALLORAN, being duly sworn for libellants, testified as follows:

Q. Where do you reside?
A. 290 Pacific street, Brooklyn.
Q. In the month of March, 1875, were you a notary public in the city of New York?
A. Yes, sir.
Q. Do you remember seeing William H. Norwood, the mate of the Susan E. Wright, about that time, or the late mate?
A. Yes, sir.
Q. Where did you see him?
A. In 68 Wall street.
Q. Whose office?
A. In the office of Beebe, Wilcox & Hobbs.
Q. Did he then make any statement to you?
A. He made a statement, and I took it down in writing and made two copies of it.
Q. At whose request did you take that statement?
A. I think it was at your request.
Q. Where was it taken; was any one present or not?
A. There was no one present. It was taken in a small office there.
Q. Do you know whether any one was present but you and Norwood?
A. He requested to be left alone, so as to give his own statement.
Q. Did he say what was to be done with the statement?
A. He had an idea that it was to be used in some suit.
Q. Did you finish the statement?
A. I took down all he had to say; he then took the two copies, intending to return in the evening to sign it.
Q. He told you he would return in the evening and sign it?
A. Yes, sir; and swear to it.
Q. Did he state why he didn't sign them then?
A. He gave no reason for it.
167 Q. Did he ever return in the evening to sign them?
A. No, sir.
Q. Was the statement with reference to the collision?
A. It was in reference to the collision.
Q. Between the steamer Benefactor and the schooner Susan E. Wright?
A. Yes, sir.
Q. Have you ever seen those statements since?
A. No, sir.

Cross-examined:

Q. Were they in your handwriting?
A. They were, sir.
Q. Did you attach any notarial certificate to them in anticipation of his coming back?
A. No, sir; I put no signatures to them. I might have put the jurat.

WILLIAM HIRST recalled for libel'ants:

Q. Did you see the pilot McNamee and Burns and Norwood on the Benefactor after the collision?

A. Yes, sir.

Q. Did you see them at any time talking with the captain of the Benefactor?

A. Captain Woods, of the Benefactor, yes, sir; in his own room.

Q. What hour of the day was that?

A. Somewheres about from ten to a quarter past eleven, drinking whiskey.

Q. Was there any one else there?

A. No, sir; only our pilot, Peter Burns, Mr. Norwood, and Captain Woods, who is a dead man now.

Q. Did you hear what they were talking about?

A. No, sir; they shut the door when they see me coming forward.

Q. They shut you out?

A. Yes, sir; three or four times they were in there drinking,

168 from about a quarter past eleven to somewheres about a quarter to four in the afternoon, when we came to 13 pier North River; four times, I counted myself; Peter Burns and Norwood was drinking; I only noticed the pilot in once; that is all I noticed him in.

Q. How long after they came on the vessel did you see them there the first time?

A. Well, we had been aboard about a quarter of an hour when the pilot came and took Mr. Norwood, our mate, and then Peter Burns was changing his socks, and I noticed it, and I says to the captain "Mark my words"——

Q. McNamee, the pilot, did he come for Pete?

A. He came in once into the mess-room.

Q. Who came for Pete to get him to go to the captain's room?

A. Captain Woods, for him to go into his own room.

Q. You came up on the Benefactor and was landed at what pier, North River?

A. Pier 13 North River.

Q. How many of the crew of the Benefactor left with you?

A. Two.

Q. Where did they go?

A. One went to board at Sheckler's, and where the other man went I don't know; 153 Washington street, I think the number is.

Q. Did you all go together?

A. Our crew did, all but the mate.

Q. Did you all leave the Benefactor together?

A. No, sir; they came afterwards, that was left behind that night, you know. She had a hole punched into her, you know, and she had to come up and get repaired.

Q. With the exception of the two Benefactor men, you all left the steamer together?

A. All our crew left together.

Q. How about the pilot McNamee?

A. He came along with Peter Burns to 13 pier, and I says to the captain, says I——

169 Q. He came along with Peter Burns?

A. Yes, sir.

Q. Any one else?

A. McAdams was coming along, you know, and the mate, Mr. Norwood.

Q. They walked separately, did they?
A. Yes, sir.
Q. Where did they go?
A. I can't tell the number—into a liquor store under Hagar's office, in West street, I think.
Q. At whose request did they go into the liquor store?
A. The pilot asked Peter Burns if he would come and have a drink, and then after he gave him his card——
Q. Where did he give him his card?
A. We should be somewheres abreast then of about two piers above 13—pier 15; Hagar's office is somewhere about 20; it is this side of Courtland street; I forget the number of it now.
Q. What did he say to Peter Burns?
A. To call at his office to-morrow.

By Mr. Owen cross-examined:

Q. After you got on board of the Benefactor, where did your men go?
A. To the mess-room.
Q. All of them?
A. Yes, sir.
Q. The captain also?
A. Yes, sir.
Q. Was the captain at any time called out to see Captain Woods?
A. He went out.
Q. Did he see Woods?
A. Yes, sir.
Q. Did you ever see Captain Mount drinking with Captain Woods?
A. No, sir.
Q. Did you see him drinking on board the vessel at all?
A. No, sir.
Q. Did you ever see him drink?
A. Not on board the vessel.
Q. Did you ever see Captain Mount drink?
A. No, sir; I never saw Captain Mount drink anything stronger than coffee.
170 Q. Never see him drink on shore about the time of this examination?
A. On the 26th of January, 1875, I did not see him drink on that day.
Q. Did you see him drink at the time you were examined as witness?
(Objected to; withdrawn.)
Q. How did you come to be so near at the time as to hear all this talk hat was going on between the pilot and Peter Burns?
A. Because I mistrusted them; I put Peter Burns as our principal witness, and that was what I told our captain; says I, "Captain," says I, "they are buying over Peter Burns." Those words I said to him, and it made me watch pretty tight.
Q. Did the captain tell you to watch him?
A. Oh, no; but then I thought it was my business, when I was half drowned, to look out about it; I shall never forget it.
Libellants rest.

Evidence for claimants resumed.

CHARLES MCNAMEE, being recalled, testified as follows:

Q. Did you have the wheel of that vessel at any time that morning to steer her—the wheel of the schooner?

A. Yes, sir.
Q. How did the wheel work?
A. The wheel didn't seem to work any way hard.
Q. How long do you think it would take to put the wheel over to port—hard aport?
A. I suppose it would take a half a minute, from hard aport.
Q. From hard aport to starboard?
A. About half a minute.
Q. You don't agree with the captain, that it would have taken two minutes?
A. No, sir; not that kind of a wheel; those screw-wheels work easier than any wheel that has been got up yet; it is a double screw-wheel.

171 Cross-examined:

Q. Do you know Mr. Lowden?
A. No, sir; I don't know him; I have seen the gentleman, though.
Q. Do you know who he is?
A. No, sir; I do not.
Q. Or what business he is in?
A. No, sir.
Q. When did you first see him?
A. I saw him at our office—Mr. Avery's.
Q. After the collision?
A. Yes, sir.
Q. With reference to this collision?
A. Yes, sir; he came there inquiring after me, and when he seen me, he asked me if my name was McNamee, and I told him yes; and he says, "I have heard a good deal about you, but never seen you." That was all there was.

Mr. OWEN:

Q. Was that after your statement at the pilot commissioner's office?
A. Yes, sir.

Mr. WILCOX:

Q. Did you understand who Mr. Lowden represented?
A. No, sir; not that I know of.
Q. He didn't say who he came from?
A. No, sir; he said nothing to me of who he came from.

Testimoney closed with exception of claimant's depositions, herein before specified, and hearing adjourned until day to be hereafter fixed.

APRIL 21ST, 1876.

Hearing resumed.

Mr. Owen reads deposition of PAUL WATTS on behalf of claimants, as follows:

My name is Paul Watts; I am forty-five years of age; I reside in New York and am a sea-faring man, and have followed the sea for many years past. I was on board the steamer Benefactor at the
172 time of the collision between her and the schooner Susan E. Wright, in February, 1875; I joined that vessel in April, 1874.

At the time of the collision I was second mate on the Benefactor; I was in the captain's watch; there were three men in that watch besides the captain; my watch was called at eight o'clock in the morning; the other watch being the mate's watch, then went below. No man in the mate's watch was on deck at the time of the collision; they were all

below; only the captain's watch was on deck; the collision occurred about fifteen minutes past ten.

Captain Woods, who commanded the Benefactor at the time of the collision, is now dead; he was killed suddenly, being hurt in the afternoon, and dying the same night. The other man in my watch was called Peter; I don't know where he is; I have not seen him for a long time. From the time I came on deck up to the time of the collision, I was most of the time in the pilot-house; the pilot-house was on the forward part of the vessel; the windows were down so that you could put your head out.

I think we were steering south-southwest; the wind was off the land; we had to haul her up a little, because the ship was making leeway. I first saw the schooner on the lee bow, about three points on our lee bow; when I first saw the schooner she was 3 miles off; she was coming north. The wheel was put to port to give her a free chance to go past us, to give her plenty of room. Our vessel on her port helm must have come up all of two, two and a half to three points; she came up enough to shake her sails; she was kept in that position until such time as the schooner altered her course; she must have altered her course or she would not have luffed up into the wind.

Q. Which way did the schooner alter her course at the time you put your wheel to port?

A. She must have put her wheel to starboard and come up to the wind.

173 Q. How long was that before the collision?

A. I can't tell exactly. It was not more than two or three minutes, because a ship going ten or twelve knots an hour, it don't take her long to go a mile.

Q. If the schooner had not altered her course how would you have passed her?

A. Passed her on the left-hand side, port to port. She would have gone to the leeward of us.

Q. How far do you think she would have passed to the leeward of you?

A. Probably four or five hundred yards to leeward of us.

Q. When you saw that she had put her wheel to starboard, what was done on your vessel?

A. Our wheel was shifted and put to starboard, too, to get clear of her.

Q. Who gave that order?

A. The captain gave the order. I gave the order, and the captain sanctioned, and he hove the wheel to starboard himself.

Q. Was any order given in relation to the mainsail, and if so, what?

A. The captain told me to lower it down, and I did so.

Q. Did you get it down before the vessels came together?

A. I got the peak down so that the mainsail was rendered useless some two minutes before the collision.

Q. Was any order given to the engineer—was any bell rung?

A. The captain stooped the ship.

Q. How close aboard was the schooner to the steamer at the time the wheel was hove to starboard and the order given to lower the mainsail?

A. She must have been all of five hundred yards or half a mile.

Q. What was the reason that you did not clear her then, if she was half a mile away, and your helm to starboard?

174 A. You can't turn a ship around like a teaspoon.

Q. Where did the steamer strike the schooner?
A. Somewhere near the mizzen rigging on the starboad side.

Cross-examined by Mr. Benedict:

I went into the pilot-house when my watch came on deck at eight o'clock in the morning. I did not leave the pilot-house that I recollect, from that time till I was told to lower the mainsail. The captain was there the whole watch. A hand steering the ship was there also. I think his name was Nelson, the one that had the wheel at the collision. He took the wheel at 10 o'clock. The man he relieved gave him the course. I was present and the captain. I don't know whether I had seen the schooner then or not.

Q. How soon after the wheel was relieved was there any order given about the wheel?
A. I don't know; probably twelve or fifteen or twenty minutes.
Q. Did you notice the time when the collision took place?
A. I did not.
Q. How was the wind that morning?
A. From the westward—west-northwest.
Q. How close would the Benefactor lie to the wind without striking?
A. Four and a half or five points.

I hereby certify that previous to the examination of the foregoing witness, Paul Watts, he was by me duly sworn to testify the truth, the whole truth, and nothing but the truth in respect of the matters herein inquired of.

New York, April 17, 1876.

EDWARD L. OWEN,
U. S. Commissioner.

Cause argued by counsel and submitted.

175 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 4th day of May, in the year of our Lord one thousand eight hundred and seventy-six. The honorable Charles L. Benedict, district judge.

WILLIAM HIRST ET AL.
vs.
THE STEAMSHIP BENEFACTOR, HER TACKLE, &c.

This cause having been heard upon the pleadings and proofs, and submitted upon the arguments and briefs of the advocates for the respective parties, and due deliberation having been had thereon,

Now, on motion of Beebe, Wilcox & Hobbs, proctors for libellants, it is ordered, adjudged, and decreed that the libellants herein recover the damages by them sustained by reason of the matters alleged in the libel herein, and that the said steamship Benefactor be condemned therefor.

And, on like motion, it is further ordered that it be referred to B. Lincoln Benedict, esq., one of the commissioners of this court, to ascertain the amount due the libellants and report thereon to this court with all convenient speed.

CHAS. L. BENEDICT.

(Endorsed:) Interlocutory decree and order of reference. Filed May 5th, 1876.

176 At a stated term of the district court of the United States of America, for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 5th day of May, in the year of our Lord one thousand eight hundred and seventy-six. The honorable Charles L. Benedict, district judge.

WILLIAM H. MOUNT ET AL.
vs.
THE STEAMSHIP BENEFACTOR, HER TACKLE, &c.

This cause having been heard upon the pleadings and proofs, and submitted upon the arguments and briefs of the advocates of the respective parties, and due deliberation having been had thereon,

Now, on motion of Beebe, Wilcox & Hobbs, proctors for libellants, it is ordered, adjudged, and decreed that the libellants herein recover the damages by them sustained by reason of the matters alleged in the libel herein, and that the said steamship Benefactor, her tackle, &c., be condemned therefor.

And, on like motion, it is further ordered that it be referred to B. Lincoln Benedict, esq., one of the commissioners of this court, to ascertain the amount due the libellants, and report thereon to this court with all convenient speed.

CHAS. L. BENEDICT.

(Endorsed:) Interlocutory decree and order of reference. Filed May 5th, 1876.

177 *Commissioner's report.*

United States district court, eastern district of New York:

WILLIAM HIRST ET AL.
vs.
THE STEAMSHIP BENEFACTOR, &c.

To the honorable Charles L. Benedict, judge of the district court of the United States, for the eastern district of New York:

In pursuance of a decretal order of reference made and entered in the above entitled cause, by which it was referred to one of the commissioners of this court to ascertain the damages sustained by the libellants, and report thereon to the court, I, B. Lincoln Benedict, United States commissioner, to whom the matter was referred, do respectfully report, that I have been attended on such reference by the proctors for the libellants and claimants, and have taken and examined the proofs offered in evidence, and thereupon find the amount of damages sustained by the libellants to be as follows:

Libellant Hirst, personal effects	$244	
Interest, Feb'y 26, '75, to date	21 96	
		$265 96
Libellant Collins, personal effects	$182 15	
Interest, Feb'y 26, '75, to date	16 39	
		$198 54
Libellant Lukens, personal effects	$165 00	
Interest, Feb'y 26, '75, to date	14 85	
		$179 65
		$644 35

178 Amounting in all to the sum of $644.35 at the date of this report.

All of which is respectfully submitted.

B. LINCOLN BENEDICT,
U. S. Commissioner.

Dated August 27, 1876.

(Endorsed:) Commissioner's report. Presented August 30th, 1876, and confirmed 4 days nisi.

Commissioner's report.

United States district court, eastern district of New York.

WILLIAM H. MOUNT ET ALS.
vs.
THE STEAMSHIP BENEFACTOR, &C.

To the honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

In pursuance of a decretal order of reference made and entered in the above entitled cause, by which it was referred to one of the commissioners of this court to ascertain the amount of the libellants' damages, and report thereon to the court, I, B. Lincoln Benedict, United States Commissioner, to whom the matter was referred, do respectfully report, that I have been attended on such reference by the proctors for libellants and claimants, and have taken and examined the proofs offered in evidence, and thereupon find the damages sustained by the libellants to be as follows:

179	For the vessel, value as a total loss		$17,850 00
	Interest at 6 per cent. from Feb'y 26, '75		1,618 50
	For personal effects of Mount		1,283 85
	Interest from Feb'y 26, '75, to date		116 41
	For freight	$2,048 00	
	Less expenses unpaid	124 86	
			1,923 14
			173 48
	Interest as above		$22,965 38
	For value of cargo, with interest, Feb'y 26, 1875, in gold, as per bill	$30,641 82	
	Premium at 114⅜	4,404 76	
	Currency		35,641 58
	Interest from Feb'y 26, '75, to date		3,177 54
	Amounting in all to		$61,189 50

at the date of this report.

All which is respectfully submitted.

B. LINCOLN BENEDICT,
U. S. Commissioner.

Dated August 30, 1876.

(Endorsed:) Commissioner's report. Filed October 21, 1876.

180 At a stated term of the district court of the United States, for the eastern district of New York, held at the United States court rooms, in the city of Brooklyn, on the 19th day of October, in the year of our Lord one thousand eight hundred and seventy-six.

Present, Hon. Charles L. Benedict, district judge.

WILLIAM HIRST, CHARLES LUKENS AND John Collins,
vs.
THE STEAMSHIP BENEFACTOR, HER ENGINES, tackle, etc.

The report of B. Lincoln Benedict, United States Commissioner, to whom was referred, to ascertain the damage to the libellants herein, by reason of the matters in the libel alleged, having been presented to the court, by which it appears that there is due to the libellant William Hirst, for loss of personal effects, the sum of two hundred and sixty-five dollars and ninety-six cents ($265.96); to the libellant, Charles Lukens, for loss of personal effects, the sum of one hundred and seventy-nine dollars and eighty-five cents ($179.85), and to the libellant, John Collins, for loss of personal effects, the sum of one hundred and ninety-eight dollars and fifty-four cents ($198.54), and the time in which to file exceptions to said report having expired, and no exception thereto having been filed:

Now, on motion of Beebe, Wilcox & Hobbs, proctors for the libellants, it is ordered, adjudged, and decreed, that the said report be, and the same is hereby, in all things confirmed.

CHARLES L. BENEDICT.

(Endorsed:) Order confirming commissioner's report. Filed October 19, 1876.

181 At a stated term of the district court of the United States, for the eastern district of New York, held at the United States court rooms, in the city of Brooklyn, on the 19th day of October, in the year of our Lord one thousand eight hundred and seventy-six.

Present, Hon. Charles L. Benedict, district judge.

WILLIAM H. MOUNT, ADAM PARTRIDGE, Gordon D. White, Arion B. Longstreet, Dennis You, Adam B. Jackson, Seneca Partridge, and Justice Nelson, and the Sun Mutual Insurance Company, and the Union Mutual Ins. Co.
vs.
THE STEAMSHIP BENEFACTOR, HER ENGINES, tackle, etc.

The report of B. Lincoln Benedict, United States commissioner, to whom it was referred to ascertain the damage to the libellants herein, by reason of the matters in the libels alleged having been presented to the court, by which it appears that there is due to the libellant William H. Mount, for loss of personal effects, the sum of fourteen hundred dollars and twenty-six cents ($1,400.26), to the libellants William H. Mount, Adam Partridge, Gordon D. White, Arion B. Longstreet, Dennis You, Adam B. Jackson, Seneca Partridge and Justice Nelson, for loss of

vessel, the sum of nineteen thousand four hundred and sixty-eight dollars and fifty cents ($19,468.50), and for loss of freight, the sum of
182 two thousand and ninety-six dollars and sixty-two cents ($2,096.62), and to the co-libellants, the Sun Mutual Insurance Company, and the Union Mutual Insurance Company, for loss on cargo, the sum of thirty-eight thousand, two hundred and twenty-four dollars and twelve cents ($38,224.12), and the time in which to file exceptions to said report having expired, and no exception thereto having been filed,

Now, on motion of Beebe, Wilcox, & Hobbs, proctors for the libellants, and of Evarts, Southmayd & Choate, proctors for said co-libellants, it is ordered, adjudged and decreed, that the said report be, and the same hereby is, in all things confirmed.

CHARLES L. BENEDICT.

(Endorsed:) Order confirming commissioner's report. Filed October 19th, 1876.

183 At a stated term of the district court of the United States, for the eastern district of New York, held at the court rooms of said court, in the city of Brooklyn, on the 20th day of October, 1876.

Present, Hon. Charles L. Benedict, district judge.

WILLIAM H. MOUNT, ADAM PARTRIDGE, Gordon D. White, Arion B. Longstreet, Dennis You, Adam B. Jackson, Seneca Partridge, Justice Nelson, and the Sun Mutual Insurance Company and the Union Mutual Insurance Company,
versus
THE STEAMSHIP BENEFACTOR, HER ENGINES, tackle, etc.

WILLIAM HIRST, CHARLES LUKENS, AND John Collins,
versus
THE SAME.

Upon the record and proceedings in the above entitled suits, and after hearing Mr. Owen on behalf of the claimants in each of the said suits, and Mr. Wilcox on behalf of the libellants therein, and Mr. Tweed on behalf of the Sun Mutual Insurance Company, and the Union Mutual Insurance Company, co-libellants in the former of said suits; and upon motion of Owen & Gray, proctors of the said claimants, it is ordered
184 that the said suits be and the same are hereby consolidated into one suit, but without prejudice to the proceedings heretofore had and taken therein.

CHARLES L. BENEDICT.

(Endorsed:) Order of consolidation. Filed and entered October 20th, 1876.

At a stated term of the district court of the United States, for the eastern district of New York, held at the United States court rooms, in the city of Brooklyn, on the 21st day of October, in the year of our Lord one thousand eight hundred and seventy-six.

Present, Hon. Charles L. Benedict, district judge.

WILLIAM H. MOUNT, ADAM PARTRIDGE, Gordon D. White, Arion B. Longstreet, Dennis You, Adam B. Johnson, Seneca Partridge, and Justice Nelson, and the Sun Mutual Insurance Company, and the Union Mutual Insurance Company, and William Hirst, Chas. Lukens and John Collins,
vs.
THE STEAMSHIP BENEFACTOR, HER ENGINES, tackle, etc.

Upon the record and proceedings in the two several suits in this court, on behalf of William H. Mount and others, and William Hirst and
185 others, against the steamship Benefactor, her engines, tackle, &c., which, under and by virtue of the order of this court, bearing date the 20th day of October, 1876, were consolidated into the present suit; and upon the reports of B. Lincoln Benedict, United States commissioner, to whom it was referred to ascertain the damage to the libellants in said suits, by reason of the matters in the libels therein alleged (which reports have been heretofore duly confirmed by this court), whereby it appears that at the date of said reports there was due to the libellant, William H. Mount, for the loss of personal effects, the sum of one thousand four hundred dollars and twenty-six cents ($1,400.26); the libellants, William H. Mount, Adam Partride, Gordon D. White, Arion B. Longstreet, Dennis You, Adam B. Jackson, Seneca Partridge, and Justice Nelson, for loss of vessel, the sum of nineteen thousand four hundred and sixty-eight dollars and fifty cents ($19,468.50); and for loss of freight the sum of two thousand and ninety-six dollars and sixty-two cents ($2,096.62); and to the co libellants the Sun Mutual Insurance Company and the Union Mutual Insurance Company, for the loss on cargo, the sum of thirty-eight thousand two hundred and twenty four dollars and twelve cents ($38,224.12); and to the libellant, William Hirst, for loss of personal effects, the sum of two hundred and sixty-five dollars and ninety-six cents ($265.96); to the libellant, Charles Lukens, for loss of personal effects, the sum of one hundred and seventy-nine dollars and eighty-five cents ($179.85); and to the libellant John Collins, for loss of personal effects, the sum of one hundred and ninety-eight dollars and fifty-four cents ($198.54); and the costs of the said libellants William H. Mount, Adam Partridge, Gordon D. White, Arion B. Longstreet, Dennis You, Adam B. Jackson, Seneca Partridge and Justice Nelson, having been duly taxed and adjusted at the sum of five hundred and twenty-five dollars and thirty five cents ($525.35); and the costs
186 of the co libellants, the said the Sun Mutual Insurance Company and the Union Mutual Insurance Company, having been duly taxed and adjusted at the sum of forty-four dollars and thirty-five cents ($44.35); and the cost of the libellants, William Hirst, Charles Lukens, and John Collins, having been duly taxed and adjusted at the sum of eighty-nine dollars ($89.00); and the said former suits having been by said order, bearing date the 20th day of October, 1876, duly consoli dated into the present suit,

Now, on motion of Beebe, Wilcox & Hobbs, proctors for the libellants above named, and of Evarts, Southmayd and Choate, proctors for the co-libellants above named, it is

Ordered, adjudged, and decreed, that the libellant, William H. Mount, recover herein the sum of one thousand four hundred dollars and twenty-six cents ($1,400.26), with interest from the date of the said report,

amounting together to the sum of one thousand four hundred and twelve dollars and fifty-one cents ($1,412.51); and that the libellants, William H. Mount, Adam Partridge, Gordon D. White, Arion B. Longstreet, Dennis You, Adam B. Jackson, Seneca Partridge, and Justice Nelson, recover herein the sum of twenty-one thousand five hundred and sixty-five dollars and twelve cents ($21,565.12), with interest from the date of said report, besides five hundred and twenty-five dollars and thirty-five cents ($525.35), costs as taxed, making altogether, including such interest, the sum of twenty two thousand two hundred and seventy-nine dollars and sixteen cents ($22,279.16); that the said co libellants, the Sun Mutual Insurance Company and the Union Mutual Insurance Company, recover herein the sum of thirty-eight thousand two hundred and twenty-four dollars and twelve cents ($38,224.12), with interest thereon from the date of said report, besides forty-four dollars and thirty five cents ($44.35) costs, making together, including such interest, the sum
187 of thirty eight thousand six hundred and two dollars and ninety-three cents ($38,602.93); that the said libellant, William Hirst, recover herein the sum of two hundred and sixty-five dollars and ninety-six cents ($265.96), with interest thereon, from the date of said report, amoun ing together to the sum of two hundred and sixty-eight dollars and twenty three cents ($268.23); that the said libellant, Charles Lukens, recover herein the sum of one hundred and seventy-nine dollars and eighty-five cents ($179.85), with interest thereon from the date of said report, amounting together to the sum of one hundred and eighty-one dollars and thirty-eight cents ($181.38); that the said libellant, John Collins, recover herein the sum of one hundred and ninety-eight dollars and fifty-four cents ($198.54), with interest thereon, from the date of said report, amounting together to the sum of two hundred dollars and twenty-three cents ($200.23); and that the said libellants, William Hirst, Charles Lukens, and John Collins, recover herein the sum of eighty-nine dollars ($89.00), the amount of their costs as taxed; and that said steamship Benefactor, her engines, tackle, &c., be condemned therefor.

And it appearing to the court that heretofore and on or about the 23d day of March, 1875, stipulations for costs in the usual form were filed in this court on behalf of the New York and Wilmington Steamship Company, claimant of the said steamship Benefactor, her engines, tackle, etc., in the sum of two hundred and fifty dollars ($250) in each of said former suits, which stipulations were duly executed by the said New York and Wilmington Steamship Company, as principal, and Andrew Boardman and Frederick Butterfield, as sureties; and it also appearing to the court that on or about the 23d day of March, 1875, and under and in pursuance of the provisions of an order theretofore made and entered in each of the said suits, and bearing date the 20th day of March, 1875,
to which reference is made for its contents, the said claimant
188 entered into and filed a stipulation in the appraised value of said steamship, to wit, the sum of forty thousand dollars ($40,000), with interest thereon, from the said 23d day of March, 1875, which said last mentioned stipulation was duly executed by the said New York & Wilmington Steamship Company, as principal, and Thomas Clyde, Andrew Boardman, and Frederick Butterfield, as sureties, all of which said stipulations (reference to which is hereby made as part of this decree) still remain in full force and effect.

And whereas it is provided in said order that such stipulation should be for the benefit of the libellants in both of said suits against said steamship (in case they should establish the liability of said steamship) and of all persons and parties who might, by due proceedings in thi

court, show themselves entitled to liens upon said steamship, by reason of the collision in the libels mentioned, and that upon the entering into and filing such stipulation the said steamship, her engine, &c., should be discharged from all liability for losses and damages occasioned to all parties for whose benefit said stipulation should be given, as by reference to said order will more fully appear.

And whereas no other libels or claims have been filed, nor proceedings taken by any other parties than those mentioned in the libels above mentioned, or included therein by petition or otherwise,

Now on like motion it is further ordered, adjudged, and decreed, that the said the New York & Wilmington Steamship Company, principal, and the said Andrew Boardman and Frederick Butterfield, sureties, pay into the registry of this court the amount of their said stipulations for costs, to wit, the sum of five hundred dollars ($500.00); and that the said New York & Wilmington Steamship Company, principal,
189 and Thomas Clyde, Andrew Boardman and Frederick Butterfield, sureties, pay into the registry of this court, the amount of their said stipulation for value, to wit, the said sum of forty thousand dollars ($40,000), with interest thereon, from the 23d day of March, 187-, amounting with said interest to the sum of forty-four thousand four hundred and seventeen dollars and ninety-one cents ($44,417.91), or show cause why execution should not issue against them, their goods, chattels, and credits therefor.

And on like motion it is further ordered, adjudged, and decreed, that unless an appeal be taken from this decree within the time limited and prescribed by the rules of this court, the clerk distribute the proceeds of said stipulations among the libellants and co-libellants herein, in proportion to the amounts of the several recoveries awarded to said libellants and co libellants, respectively, in this decree.

CHAS. L. BENEDICT.

(Endorsed:) Final decree. Filed and entered, October 21st, 1876.

190 U. S. district court, eastern district of New York.

THE STEAMSHIP BENEFACTOR, HER ENGINES, tackle, &c., The New York & Wilmington Steamship Company, claimants and appellants,
ads.
WILLIAM H. MOUNT AND OTHERS, LIBELLANTS and appellees.

SIRS: Please take notice that the claimants above named hereby appeal to the next circuit court of the United States for the eastern district of New York, second circuit, from the final decree made and entered herein, on the 21st day of October, 1876, and from the whole and every part thereof.

Dated New York, November 1, 1876.

Yours, &c.,

OWEN & GRAY,
Proctors for Claimants and Appellants.

To B. LINCOLN BENEDICT, Esq., *Clerk.*
BEEBE, WILCOX & HOBBS, Esqs.,
Proctors for Libellants and Appellees.
EVARTS, SOUTHMAYD & CHOATE, Esqs.,
Proctors for Co-libellants and Co-appellees.

(Endorsed:) Notice of appeal. Filed November 11th, 1876.

191 Circuit court of the United States for the eastern district of New York.

THE STEAMSHIP BENEFACTOR, HER ENGINE, &c., The New York and Wilmington Steamship Company, claimants and appellants,
ads.
WILLIAM H. MOUNT, ADAM PARTRIDGE, GORdon D. White, Arion B. Longstreet, Dennis You, Adam B. Johnson, Seneca B. Partridge, and Justice Nelson, and the Sun Mutual Insurance Company, and the Union Mutual Insurance Company, and William Hirst, Charles Lukens, and John Collins, libellants & appellees.

The petition and appeal of The New York and Wilmington Steamship Company, claimant above named, showeth:

That on or about the 4th day of March, 1875, the above-named libellants, William H. Mount, Adam Partridge, Gordon D. White, Arion B. Longstreet, Dennis You, Adam B. Johnson, Seneca B. Partridge, and Justice Nelson, and the Sun Mutual Insurance Company, and the Union Mutual Insurance Company filed their libel in the district court of the United States for the eastern district of New York, against the steamship Benefactor, her engine, tackle, apparel, &c., in a cause
192 of collision, &c., and on the same day, the above-named libellants, William Hirst, Charles Lukens, and John Collins, filed their libel against said steamship, &c., in said district court, in which said libels it is alleged and praying, as therein contained, to which said libels the petitioners refer for their contents.

That thereafter, and on the 6th day of April, in the year last aforesaid, the claimant having filed its claim, and executed the necessary stipulations for costs in each of said suits, and having executed a stipulation for value pursuant to an order of the court, dated the 20th day of March, 1875, which said last-mentioned stipulation was given for the benefit of the libellants in each of the said suits, and of al parties who might have sustained damages by reason of the collision in the libels mentioned, as by reference to said order will more fully appear, and to which reference is had for its contents, did file its answers to each of said libels, alleging, as herein contained, and insisting that said steamship Benefactor was not liable for the damages claimed by the libellants, and praying that the said district court would pronounce against said libels, and condemn the libellants in costs, and as will more fully appear on reference to said answers, and to which for the contents thereof this appellant asks leave to refer.

That thereafter said causes came on to be tried and to be heard before the honorable Charles L. Benedict, judge of the said district court, on the 18th day of March, and 21st day of April, 1876, upon the allegations and proofs adduced by the respective parties, and said judge having advised thereon, on or about the 4th day of May, in the year last aforesaid, made a decretal order or sentence bearing date that day, that the libellants in each of said suits recover in said actions against the steamship Benefactor, her tackle, &c., the damages by them sustained by reason of the collision in the pleadings mentioned, and with costs to be taxed, and that it be referred to a commissioner of said
193 court to ascertain and compute the amount of such damages, and

to report thereon to said court as by reference to said decretal order will more fully appear; that after proceeding with such reference before B. Lincoln Benedict, esq., one of the said commissioners, he made his report to said court, bearing date the 30th day of August, 1876.

That thereafter, and on the 21st day of October, 1876, an order was made and entered in said causes consolidating the said causes into one cause, as by reference to said order will more fully and at large appear.

That thereafter, and on the 20th day of October, 1876, a final decree was made, bearing date that day, for the recovery by the libellant, William H. Mount, of the sum of one thousand four hundred and twelve dollars and fifty-one cents, for the recovery by the libellants, William H. Mount, Adam Partridge, Gordon D. White, Arion B. Longstreet, Dennis You, Adam B. Jackson, Seneca Partridge, and Justice Nelson, of the sum of twenty-two thousand two hundred and seventy-nine dollars and sixteen cents damages and costs, and for the recovery by the co-libellants, the Sun Mutual Insurance Company and the Union Mutual Insurance Company, of the sum of thirty-eight thousand six hundred and two dollars and ninety-three cents damages and costs, and for the recovery by the libellant, William Hirst, of the sum of two hundred and sixty-eight dollars and twenty-three cents, and for the recovery by the libellant, Charles Lukens, of the sum of one hundred and eighty-one dollars and thirty eight cents, and for the recovery by the libellant, John Collins, of the sum of two hundred dollars and twenty-three cents, and for the recovery by the libellants, William Hirst, Charles Lukens, and John Collins, of the sum of eighty-nine dollars, the amount of their costs against said steamship Benefactor, her engine, tackle, and furniture, as will more fully appear by reference to said decree, to which said reference is had for its contents.

194 And this appellant is advised and insists that said decree is erroneous, inasmuch as the said libels should have been dismissed with costs, and for that, if said libellants were entitled to a decree for any damages, damages have been which should not have been allowed.

And this appellant, for these and other reasons, appeals from the whole of said decree to the next circuit court to be held in the said district (and in said appeal it intends to seek a new decision on the facts, the pleadings, and proofs in the district court, and other proofs to be produced in the circuit court, and to pray different relief), and it prays that the said decree, and every part thereof, may be reversed with costs, or such other decrees thereupon made as to the said circuit court shall seem just, and the said appellees be condemned to pay to this appellant its costs and damages in the premises.

And this appellant will ever pray, &c.

OWEN & GRAY,
Proctors for Appellant.

(Endorsed:)
Service admitted. March 22nd, 1877.
EVARTS, SOUTHMAYD & CHOATE,
Proctors for Sun Mutual Ins. Co.
BEEBE, WILCOX & HOBBS,
Libellant's Proctors.

Petition of appeal. Filed March 22nd, 1877.

195 Know all men by these presents, that we, The New York & Wilmington Steamship Company, Frederick Butterfield, Andrew

Boardman, Thomas Clyde and William P. Clyde, are held and firmly bound unto William H. Mount, Adam Partridge, Gordon D. White, Arion B. Longstreet, Dennis You, Adam B. Johnson, Seneca B. Partridge, Justice Nelson, The Sun Mutual Insurance Company, The Union Mutual Insurance Company, William Hirst, Charles Lukens, and John Collins, in the sum of fifty thousand dollars, to be paid to the said William Mount, Adam Partridge, Gordon D. White, Arion B. Longstreet, Dennis You, Adam B. Johnson, Seneca B. Partridge, Justice Nelson, The Sun Mutual Insurance Company, The Union Mutual Insurance Company, William Hirst, Charles Lukens, and John Collins, their executors, administrators, successors, or assigns, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents, sealed with our seals and dated the day of February, in the year of our Lord one thousand eight hundred and seventy-seven.

Whereas The New York & Wilmington Steamship Company, claimants of the steamship Benefactor, her engines, &c., as appellant, has appealed to the circuit court of the United States for the eastern district of New York, in the second circuit, from a decree of the district court of the United States for the said eastern district, bearing date the 21st day of October, 1876, in a suit in which William H. Mount and the parties above mentioned were libellants, against the steamship Benefactor, her engine, &c.:

196 Now, therefore, the condition of this obligation is such that if the above named appellant, The New York & Wilmington Steamship Company, shall prosecute said appeal with effect, and pay all damages and costs which shall be awarded against it as such appellant therein, if it shall fail to make such appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

THE NEW YORK & WILMINGTON STEAMSHIP CO.,
[SEAL.] By THOMAS CLYDE, *President.*

THOMAS CLYDE. [SEAL.]
FRED. BUTTERFIELD. [SEAL.]
ANDREW BOARDMAN. [SEAL.]
WM. P. CLYDE. [SEAL.]

Sealed and delivered, and taken and acknowledged this fifth day of March, 1877, before me.

[SEAL.] THEODORE RITTER,
Notary Public, New York.

197 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Frederick Butterfield, Andrew Boardman, Thomas Clyde and William P. Clyde, being duly sworn, depose and say, and each for himself says, that the said Butterfield and Boardman reside in the southern district of New York, and the said Thomas Clyde resides in Philadelphia, and the said William P. Clyde resides in the city of Brooklyn; that he is worth the sum of one hundred thousand dollars over and above all his just debts and liabilities.

FRED. BUTTERFIELD.
ANDREW BOARDMAN.
THOMAS CLYDE.
WM. P. CLYDE.

Sworn to this fifth day of March, A. D. 1877, before me.

[L. S.] THEODORE RITTER,
Notary Public, New York.

198 STATE OF NEW YORK,
City and County of New York, ss:

On this fifth day of March, in the year of our Lord one thousand eight hundred and seventy-seven, before me personally came Thomas Clyde, president of The New York and Wilmington Steamship Company, with whom I am personally acquainted, who being by me duly sworn, said that he resided in the city of Philadelphia, Pennsylvania; that he was the president of the New York and Wilmington Steamship Company in the within instrument named; that he was acquainted with the corporate seal of the said company; that the seal affixed to the said within instrument was such corporate seal; that it was affixed by the order of the board of directors of the said company, and that he signed his name thereto by the like order, as president of the said company.

[L. S.] THEODORE RITTER,
Notary Public, New York.

This bond approved as to form and amount and sufficiency of surety. Dated New York, March 20th, 1877.

CHARLES L. BENEDICT.

(Endorsed:) Bond for damages and cost on appeal. Filed March 5th, 1877.

199 *Opinion.*

MAY 4TH, 1876.

BENEDICT, J.:

These are actions to recover of the steamship Benefactor the sum of $145,113.00 for the loss of the schooner Susan Wright and her cargo, lost in a collision which occurred between these two vessels on the 26th of February, 1875. The place of the collision was off Squam Beach, about two miles off shore. The time of the collision was about ten o'clock in the morning. The weather was fine and clear. There were no vessels near to interfere with the navigation. The steamer was bound outward from New York, running some ten knots an hour, and the schooner was bound to New York, running eight knots, close hauled upon the wind, which was west to west-northwest. Each vessel was seen by the other at a distance of some miles, and there was nothing to prevent their passing each other in safety. They came together without slacking their speed, and the schooner sunk almost immediately with her valuable cargo.

On the part of the steamer, it is charged that the steamer saw the schooner approaching her course, and ported her helm to pass inshore of her.

That the schooner then also ported, and the vessels upon these courses would have passed each other in safety, but that as the vessels neared each other the schooner suddenly luffed across the bows of the steamer, whereupon the steamer bore away at once, let go her spanker, and stopped her engine, but had not time to avoid the schooner.

Upon the evidence there is great room to doubt whether an effort was made to luff the schooner as is charged by the steamer. If such an effort was made it was at the last moment, and when little or no change in the course of the schooner could have been effected, and it was in extremis.

200 The fault causing the collision was the fault of the steamer in attempting to pass ahead of the schooner, and so close to her

When the vessels neared each other, the course of the steamer, as the pilot on the schooner, who is called as a witness by the steamer, judges, would have carried her from thirty to forty feet clear of the schooner.

There was no necessity for thus shaving the schooner, and it was highly improper so to do. The steamer having chosen such a dangerous course, it matters not whether she misjudged her ability by forty feet, and so ran into the schooner, or whether the schooner, by reason of a similar misjudgement, was led to suppose that the steamer could not clear her, and at the last moment luffed.

A steamer has no right, under circumstances like these, needlessly to place herself in such close proximity to a sailing vessel that the error of a moment will bring destruction.

There must be a decree for the libellant, with an order of reference to ascertain the amount of the loss.

201 To the honorable Alexander S. Johnson, judge of the circuit court of the United States, within and for the eastern district of New York, second circuit:

The New York and Wilmington Steamship Company for answer to the libel and complaint of William Hirst, Charles Lukens, Hugh McAdam, and John Collins, against the steamship Benefactor, her engine, etc., and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime, alleges, and upon information and belief, articulately propounds as follows, in this their amended answer, filed by permission of the said circuit court.

First. They admit that at the time of filing the libel herein, the steamship Benefactor was within the jurisdiction of this court.

Second. They have not any knowledge nor any information sufficient to form a belief as to the allegations of the second article of the libel, and they therefore deny the same.

Third. They deny the several allegations of the third article of the libel, except in so far as the same are expressly admitted in, or which are in conformity to, the statement in the eighth article of this amended libel.

Fourth. They have no knowledge of the several matters in the fourth article of the libel, and therefore deny the same.

202 Fifth. They have no knowledge of the several matters stated in the fifth article of the libel, and therefore deny the same.

Sixth. They deny the several allegations contained in the sixth article of the libel.

Seventh. They admit that the payment of the alleged loss has been refused, because, as they aver, the collision and loss was caused solely by the fault of the schooner Susan Wright.

Eighth. In respect to the collision these respondents, upon information and belief, admit and say, that a collision did occur between the schooner Susan Wright and the steamship Benefactor, after ten o'clock in the morning of the 26th February, 1875, in the vicinity of what is commonly known as the Woodlands, on the coast of New Jersey or off Squan Beach.

That the schooner was bound to the port of New York. The wind west northwest, and hauling to the northward and blowing a strong breeze from off the land. That the Benefactor was a steam propeller, furnished with sails—a mainsail, foresail, and jib—built to carry freight, and employed in the coasting trade as a carrier of freight between New York and Wilmington, North Carolina. Her length was one hundred and seventy-five feet. She was flat-bottomed and drawing a light draft of water. Her average rate of speed when loaded was from seven and

a half to eight miles an hour. Her highest rate of speed with steam and sails with plenty of wind was about ten and a half miles, and her usual route in passing off the coast off which the collision took place, and the one required by the exigencies of safe and convenient navigation with the wind strong from off the land, was three to four miles out, and not further out than that. She had left New York about six o'clock
203 in the morning of said 26th day of February, bound for Wilmington, being in all respects seaworthy, tight, staunch, strong, well fitted, officered, manned, and equipped, with a cargo consisting of general merchandise, bound on one of her regular trips to Wilmington, North Carolina.

That when approaching to pass off the place where the collision took place, she was on her usual and a proper course as to distance off and along the line of the coast with the wind off land bound down. The captain and mate were in the pilot-house of the Benefactor, attending to her navigation, and there was another man at the wheel, and good lookout on the forecastle attending to his duties.

That the said steamship was steering south-southwest by the compass, making a sailing course south by west parallel to the line of the coast, and while so running down along the coast under steam and having all sails set, and having a competent lookout stationed forward and attending to his duties, the schooner was discovered approaching, bound up, being then three miles distant off the port bow of the steamer, bearing from one to two points on the port bow, the steamer at that time running down along the coast on the weather or land side of the schooner, the latter making a sailing course outside, and parallel to the course of the steamer a little outranging north-northeast or thereabout. That if the schooner had kept on the course she was then making, the steamship would have passed the schooner off to the windward a proper and safe distance, and at a distance off from three hundred to four hundred yards or thereabouts.

That on the closer approach to pass off said schooner to windward, the schooner was observed to be bearing off to leeward, which might be from porting her helm or neglect of her helm, and so notice to the master of the steamer, who was watching her, of negligent navigation on board the schooner, and thereupon the helm of the steamer was put to port, and her course or direction changed to south, west-half-west,
204 in towards the land, and on the relative courses on which the two vessels were then standing the steamer would have passed off to windward at a safe and proper distance, and a distance off of four hundred to five hundred yards.

While the man at the wheel of the steamer was porting his helm, and before time enough to steady it, the schooner was observed changing her course from a course off her proper course, bound up to in toward the land, and from a course to leeward of that of the steamer, on which the steamer would have passed her in entire and absolute safety to one across the bow of the steamer, in toward the land, and continuing in that course across the bow of the steamer.

That in the extremity caused by this change of course and direction of the schooner to a course across the bows of the steamer from a course and direction to leeward, upon which the steamer would have passed clear of the schooner at a distance off unquestionably sufficient for entire and absolute safety to the schooner, the helm of the steamer was put a-starboard and the peak of her main sail by order of her captain was lowered to come round to leeward as rapidly as possible to clear the schooner by passing under her stern, and then immediately before the collision the

engine was stopped, but the steamer, in the extremity produced by this sudden change of the schooner to a course and direction across the bows of the steamer, was not able to escape the collision which followed after the helm of the steamer had been put to starboard, and the steamer's course and direction was changed as far as possible to leeward to clear the schooner, then standing in towards the shore across the steamer's bows, by passing under her stern, and the steamer's engines had been stopped, that being all that the steamer could do, the stem of the steamer striking against the starboard quarter of the schooner near the corner aft, the schooner at that time standing across, heading directly on to the land, almost exactly west by north, her sails shaking in the wind.

205 That the schooner's steering and making from a course farther out to leeward, and to leeward of the course of the steamer, a course across the bows of the steamer in toward the land, head on, thereby causing the collision, was not caused by, nor justly attributable to, any previous close proximity of the steamer in passing off to windward of the schooner, but solely through the want of a proper lookout on board the schooner, as the steamer was approaching to pass off of, and the improper and negligent navigation of the schooner.

Ninth. These respondents aver that no proper lookout was kept on the said schooner as the said steamer was approaching to pass off inside to windward of her, and that the collision aforesaid was caused by the negligent navigation of the schooner in standing across the bow of the steamer in toward the shore, from a course out and about north-north-east, on which the schooner was standing as the steamship was passing down to windward and crossing in such close proximity to the steamer that the steamer was not able, by any means in her power, to avoid the collision which followed upon or after the efforts of the steamer to clear the schooner by starboarding so as to bring the steamer round to leeward as rapidly as possible in the hope of clearing the schooner by passing under her stern.

That as the steamer was coming round on the starboard helm, to avoid the collision, the schooner, by porting her helm in co-operation of the movement of the steamer, might have avoided said collision, but she made no reasonable effort to do so; but, as these claimants are informed, put her helm a-starboard, thereby rendering the collision unavoidable by the steamer. And these respondents aver that the collision in question was not caused by any fault on the part of the steamship, but solely through the negligent navigation and fault of the schooner.

206 Tenth. And these respondents further say, that as soon after the collision as it was practicable, the steamship put back and took the officers and crew on board, and with them returned to the port of New York. That, upon examination, the said steamship was found to have had a hole stove in her bow by the collision, and that she had sustained other damages. That to repair the damages which she had so sustained, including the loss of the use of the steamship in putting back to the port and while delayed in making such repairs, will cost a sum exceeding five thousand dollars, which these respondents claim to recover in this action, in case both vessels should be found to have been in fault, and a decree be entered apportioning the damages caused by the said collision.

Eleventh. That all and singular the premises herein contained are true, in verification whereof, if denied, the respondents crave leave to refer to the depositions and other proofs to be by them exhibited in this cause.

Wherefore the respondents pray that this honorable court will pronounce against this libel aforesaid, and dismiss the same, with costs.

THE NEW YORK & WILMINGTON STEAMSHIP COMPANY,
By FRED. A. SAWYER,
Secretary.

OWEN & GRAY,
Proctors for Claimants.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Frederic A. Sawyer, being duly sworn, says that he is secretary of the New York and Wilmington Steamship Company, the claimants above named; that he has read the foregoing answer, and knows
207 the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and that as to those matters he believes it to be true.

FRED. A. SAWYER.

Subscribed and sworn to before me this 19th day of May, 1877.
[L. S.] S. G. LEATHEM,
Notary Public, New York Co.

Amended answer. Filed May 24th, 1877.

208 To the honorable Alexander S. Johnson, judge of the circuit court of the United States within and for the eastern district of New York, second circuit:

The New York & Wilmington Steamship Company, for answer to the libel and complaint of William H. Mount, Adam Partridge, Gordon D. White, Arion B. Longstreet, Dennis You, Adam B. Jackson, Amasa Partridge, and Justus Nelson, against the steamship Benefactor, her engine, &c., and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime, alleges, and, upon information and belief, articulately propounds as follows, in this their amended answer, filed by permission of the said circuit court:

First. They admit that at the time of filing the libel herein the steamship Benefactor was within the jurisdiction of this court.

Second. They have not any knowledge nor any information sufficient to form a belief as to the allegations of the second article of the libel, and they therefore deny the same.

Third. They deny the several allegations of the third article of the libel, except in so far as the same are expressly admitted in, or which are in conformity to, the statements in the seventh article of this amended answer.

Fourth. They have no knowledge of the several matters stated in the fourth article of the libel, and therefore deny the same.

209 Fifth. They deny the several allegations contained in the fifth article of the libel.

Sixth. They admit that payment of the alleged loss has been refused, because, as they aver, the collision and loss was caused solely by the fault of the schooner Susan Wright.

Seventh. In respect to the collision, these respondents, upon information and belief, admit and say that a collision did occur between the schooner Susan Wright and the steamship Benefactor after ten o'clock

in the morning of the 26th February, 1875, in the vicinity of what is commonly known as the Woodlands on the coast of New Jersey, or off Squan Beach. That the schooner was bound to the port of New York. The wind was west-northwest, and hauling to the northward, and blowing a strong breeze from off the land. That the Benefactor was a steam propeller, furnished with sails—mainsail, foresail, and jib—built to carry freight, and employed in the coasting trade as a carrier of freight between New York and Wilmington, North Carolina. Her length was 175 feet. She was flat-bottomed and drawing a light draft of water. Her average rate of speed when loaded was from seven and a half to eight miles an hour. Her highest rate of speed, with steam and sails, with plenty of wind, was about ten and a half miles, and her usual route in passing off the coast off which the collision took place, and the one required by the exigencies of safe and convenient navigation, with the wind strong from off the land, was three to four miles out, and not further out than that. She had left New York about six o'clock in the morning of said 26th February, bound for Wilmington, being in all respects seaworthy, tight, staunch, strong, well fitted, officered, manned, and equipped, with a cargo consisting of general merchandize, bound on one of her regular trips to Wilmington, North Carolina.

210 That when approaching to pass off the place where the collision took place she was on her usual and a proper course as to distance off and along the line of the coast, with the wind off the land, bound down.

The captain and mate were in the pilot-house of the Benefactor, attending to her navigation, and there was another man at the wheel, and good lookout on the forecastle attending to his duties. That said steamship was steering south-southwest by the compass, making a sailing course south by west parallel to the line of the coast, and while so running down along the coast under steam, and having all sails set, and having a competent lookout stationed forward and attending to his duties, the schooner was discovered approaching, bound up, being then three miles distant off the port bow of the steamer, bearing from one to two points on the port bow, the steamer at that time running down along the coast on the weather or land side of the schooner, the latter making a sailing course outside and parallel to the course of the steamer, a little outranging north-northeast or thereabouts.

That if the schooner had kept on the course she was then making the steamship would have passed the schooner off to windward a proper and safe distance, and at a distance off—from 300 to 400 yards, or thereabouts.

That on a closer approach to pass off said schooner to windward the schooner was observed to be bearing off to leeward, which might be from porting her helm or neglect of her helm, and so notice to the master of the steamer, who was watching her, of negligent navigation on board the schooner, and thereupon the helm of the steamer was put to port, and her course or direction changed to southwest half south, in toward the land, and on the relative courses on which the two vessels were then standing the steamer would have passed off to windward at a safe and proper distance, and a distance off of 400 to 500 yards

211 While the man at the wheel of the steamer was porting his helm, and before time enough to steady it, the schooner was observed changing her course from a course off her proper course bound up to in toward the land, and from a course to leeward of that of the steamer, on which the steamer would have passed her in entire and ab-

solute safety, to one across the bow of the steamer, in toward the land, and continuing in that course across the bow of the steamer.

That in the extremity caused by this change of course and direction of the schooner to a course across the bow of the steamer from a course and direction to leeward, upon which the steamer would have passed clear of the schooner at a distance off unquestionably sufficient for entire and absolute safety to the schooner, the helm of the steamer was put a-starboard and the peak of her mainsail, by order of her captain, was lowered to come round to leeward as rapidly as possible, to clear the schooner by passing under her stern; and then immediately before the collision the engine was stopped, but the steamer, in the extremity produced by this sudden change of the schooner to a course and direction across the bows of the steamer, was not able to escape the collision, which followed after the helm of the steamer had been put to starboard and the steamer's course and direction was changed, as far as possible, to leeward to clear the schooner, then standing in towards the shore across the steamer's bow, by passing under her stern, and the steamer's engine had been stopped, that being all that the steamer could do, the stem of the steamer striking against the starboard quarter of schooner, near the corner aft, the schooner at that time standing across, heading directly on to the land, almost exactly west by north, her sails shaking in the wind.

That the schooner's steering and making from a course farther out to leeward, and to leeward of the course of the steamer, a course across the bows of the steamer in toward the land, head on, thereby causing
212 the collision, was not caused by, nor justly attributable to, any previous close proximity of the steamer in passing off to windward of the schooner, but solely through the want of a proper lookout on board the schooner as the steamer was approaching to pass off of and the improper and negligent navigation of the schooner.

Eighth. These respondents aver that no proper lookout was kept on the said schooner as the said steamer was approaching to pass off inside to windward of her, and that the collision aforesaid was caused by the negligent navigation of the schooner in standing across the bow of the steamer in toward the shore from a course out and about north northeast, on which the schooner was standing as the steamship was passing down to windward, and crossing in such close proximity to the steamer that the steamer was not able, by any means in her power, to avoid the collision which followed upon or after the efforts of the steamer to clear the schooner by starboarding so as to bring the steamer round to leeward as rapidly as possible in the hope of clearing the schooner by passing under her stern.

That as the steamer was coming round on the starboard helm to avoid the collision, the schooner, by porting her helm in co-operation with the movement of the steamer, might have avoided said collision, but she made no reasonable effort to do so, but, as these claimants are informed, put her helm starboard, thereby rendering the collision unavoidable by the steamer; and these respondents aver that the collision in question was not caused by any fault on the part of the steamship, but solely through the negligent navigation and fault of the schooner.

Ninth. And these respondents further say that as soon after the collision as it was practicable the steamship put back, and took the officers and crew on board and with them returned to the port of New York.

That upon examination the said steamship was found to have had
213 a hole stove in her bow by the collision, and that she had sustained other damages by the collision. That to repair the damages which

she had so sustained, including the loss of the use of the steamship in putting back to port, and while delayed in making such repairs, will cost a sum exceeding five thousand dollars, which these respondents claim to recover in this action, in case both vessels should be found to have been in fault, and a decree be entered apportioning the damage caused by the said collision.

Tenth. That all and singular the premises herein contained are true, in verification whereof, if denied, the respondents crave leave to refer to the depositions and other proofs to be by them exhibited in this cause.

Wherefore the respondents pray that this honorable court will pronounce against the libel aforesaid, and dismiss the same with costs.

THE NEW YORK & WILMINGTON STEAMSHIP COMPANY,
By FRED. A. SAWYER, *Secretary.*

OWEN & GRAY,
Proctors for Claimants.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Frederic A. Sawyer, being duly sworn, says that he is secretary of the New York & Wilmington Steamship Company, the claimant above named, that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and that as to those matters he believes it to be true.

FRED. A. SAWYER.

Sworn to before me this 19th day of May, 1877.
[L. S.]
S. G. LEATHEM,
Notary Public, New York Co.

Amended answer. Filed May 24th, 1877.

214 U. S. circuit court, eastern district of New York.

THE STEAMSHIP BENEFACTOR, HER ENGINE, &c., The New York & Wilmington Steamship Company, claimant and appellant, *ads.* WILLIAM H. MOUNT ET ALS.

GENTLEMEN: Please to take notice that E. C. Reade, R. Doane, and Thomas Jones, witnesses on the part of the appellant herein, will be examined before me, under and in pursuance of the 49th admiralty rule, at my office, No. 62 Wall street, in the city of New York, on the 4th day of May instant, at two o'clock in the afternoon of that day, at which time and place you are hereby notified to be present and put interrogatories, if you see fit.

Dated N. Y., May 2d, 1877.

Yours, &c.,

HENRY T. WING,
Notary Public, Kings Co., with certificate filed in New York.

To Messrs. BEEBE, WILCOX & HOBBS,
Proc's for Lib'Us, Mount et als.
Messrs. EVARTS, SOUTHMAYD & CHOATE,
Proc's for Libellants, Insurance Companies.

215 U. S. circuit court, eastern district of New York.

THE STEAMSHIP BENEFACTOR, HER ENGINE, etc., The New York & Wilmington Steam ship Company, claimant and appellant, *ads.* WILLIAM H. MOUNT ET ALS.

GENTLEMEN: Please to take notice, that George T. Allen, a witness on the part of the appellant herein, will be examined before me, under and in pursuance of the 49th admiralty rule, at my office, No. 62 Wall street, in the city of New York, on the 4th day of May instant, at two o'clock in the afternoon of that day, at which time and place you are hereby notified to be present and put interrogatories, if you see fit.

Dated New York, May 3d, 1877.

Yours, &c.,

HENRY T. WING,
Notary Public, Kings Co.

To Messrs. BEEBE, WILCOX & HOBBS,
Pro's for Lib'ts, Mount et als.
" EVARTS, SOUTHMAYD & CHOATE,
Proc's for Libellant, Insurance Companies.

216 United States circuit court, eastern district of New York.

THE STEAMSHIP BENEFACTOR, HER ENGINE, &c., The New York & Wilmington Steamship Company, claimant and appellant, *ads.* WILLIAM H. MOUNT AND OTHERS, LIBELlants and appellees.

Testimony on behalf of appellant taken under and in pursuance of the forty-ninth rule in admiralty, before H. T. Wing, esq., a notary public for Kings County (certificate filed in the city of New York).

NEW YORK, *May* 4, 1877.

Pursuant to notice parties appear.

Present, Mr. Vansantvoord and Mr. Owen, for the claimant and appellant; Mr. Wilcox for the libel ants, William H. Mount and others; Mr. Allen Evarts, for the Sun Mutual Insurance Company and the Union Mutual Insurance Company.

At the request of Mr. Wilcox the examination is adjourned to May 5th, 1877, at 9 o'clock a. m.

217 NEW YORK, *May 5th*, 1877.

Pursuant to adjournment parties appear.

Present, Mr. Vansantvoord and Mr. Owen, for claimant and appellant; Mr. Wilcox, for libellants and appellees, William H. Mount and others; Mr. Charles H. Tweed, for the Sun Mutual Insurance Company and the Union Mutual Insurance Company.

The signatures of the witnesses whose testimony is taken herein are, by consent of parties, to be attached to the stenographer's original notes, and are waived as to the long-hand transcript of the same.

GEORGE T. ALLEN sworn and examined by Mr. Vansantvoord:

Q. Were you on board the Benefactor at the time of the collision with the schooner February 26, 1875?

A. Yes, sir.

Q. How long had you been on board her?

A. About three months—between three and four months.

Q. Before that time?

A. Yes, sir.

Q. What has been your business?

A. Cook and steward.

Q. Has that been your business on board ship?

A. Yes.

Q. Had you followed the sea before?

A. Yes; I had been before the mast when I was young—quite a boy.

Q. How many years had you followed the water?

A. Over twenty years.

Q. You know the difference, then, between the starboard side and the port side of a ship?

A. Yes.

Q. What were you on the Benefactor?

A. Cook and steward.

218 Q. Did you know anything of this collision?

A. Not previous to the collision.

Q. You did not know anything until when?

A. Until I felt the shock of the collision.

Q. Where were you at the time you felt the shock?

A. In the kitchen—in the galley.

Q. Where is that galley?

A. About the centre of the steamer.

Q. On deck?

A. On deck, sir.

Q. When you heard the shock of the collision did you come o

A. Yes.

Q. Where did you go to?

A. I went on deck—walked forward.

Q. On which side of the deck?

A. On the starboard side.

Q. And did you see the schooner and steamer in actual collision?

A. I saw them in actual collision; it did not take me more than about five or six seconds to get on deck after the collision—after I felt the shock.

Q. It was clear, broad daylight, was it?

A. Yes

Q. Could you see the shore?

A. Oh, yes; very clearly.

Q. Did you observe in what direction the schooner was heading?

(Objected to by Mr. Wilcox.)

A. I did.

Q. How was she heading? What was the direction of the schooner in reference to the land?

(Objected to.)

A. She appeared to be pointing directly toward the land. I paid special attention to the land, beause it was my impression that we were both going to sink.

Q. And she was heading directly for the land?

A. Heading directly for the land, as near as I could judge.

219 Q. Do you know the direction of the shore off where this collision was?

A. I cannot state positively; but to the best of my belief——

(Mr. Wilcox objected.)

Mr. VANSANTVOORD to the witness. You may state that.

A. To the best of my judgment the shore must have run north by east, and south by west, something like that.

Q. Assuming that to be the course of the shore, north by east and south by west, in what direction was this schooner heading by the compass?

A. As near as I could judge she would be heading about west by north, something like that.

Q. Not varying more than one point from the west?

A. I should not think so.

Cross examined by Mr. WILCOX:

Q. Is your galley on the main deck?

A. On the upper main deck—yes, sir.

Q. What were you doing at the time you felt the shock?

A. I was doing nothing whatever at the time. I was waiting for my fire to burn.

Q. When you heard the shock did you go out from your galley on to the deck, on the same level that you stood before the time that you heard the shock?

A. Yes, sir.

Q. You did not go up any stairs?

A. No, sir.

Q. How large was your galley?

A. Well, I should say it may be fifteen feet long—perhaps more—and twelve feet wide—twelve to fifteen—I may be mistaken in regard to a few feet.

Q. How many doors were there to it?

A. Two doors.

Q. One on each end?

220 A. On each side, sir.

Q. Were the doors shut?

A. The doors were shut; yes, sir.

Q. Did you do nothing from the time you heard the shock until you went out and saw the vessels in collision?

A. No, sir.

Q. You wish to swear positively as to definite time—as to the time that elapsed from the time you felt the shock until you came out and saw the vessels in collision?

A. Not to a second, sir.

Q. Do you wish to swear to minutes?

A. I could swear to three minutes.

Q. Will you swear positively that it was not more than three minutes after you felt the shock until you came out and saw the vessels in collision?

A. I can swear positively to that; yes, sir.

Q. And that is all that you can do, that it was not more than three minutes?

A. I can swear positively to that; the lapse of time I suppose would not be more than six seconds, because it does not take me long, when I suppose a ship is going to sink, to get on deck.

Q. Which did you notice first when you came out—the direction of the shore, or the heading and direction of the vessel?

A. I took them both in at a glance.

Q. You expected then that both vessels were going to sink?

A. That was my impression at the time.

Q. Looking out to save yourself?

A. Yes.

Q. Somewhat excited, I suppose, as you would naturally be under the circumstances, when you came out, and thought those vessels were going down?

A. The lapse of time was so short, that I really could not have time to get excited.

Q. How far from the stem of the Benefactor did you stand when you noticed the direction of the shore?

221 A. That will entirely depend upon my judgment, you know; it would be guesswork; I do not know the length of the ship; I should judge I stood 60 feet.

Q. At that time was the bow of your vessel in contact with the schooner?

A. In direct contact—yes, sir.

Q. You are sure of that?

A. Yes, sir.

Q. Did you notice the sails of the schooner?

A. Yes, sir.

Q. Did you see the vessels separate?

A. Yes.

Q. How long were they in actual contact?

A. To the best of my belief and judgment they were not in contact more than about two to three minutes.

Q. Will you swear that they were in contact as long as that—that you saw them in contact as long as two to three minutes?

A. I cannot swear positively that such was the case, but that, to the best of my judgment, would be the time.

Q. What did you do, if anything, from the time you first saw them in contact, until they separated?

A. I walked forward a short distance and then turned—seeing some men lowering the mainsail and endeavoring to lower a boat; I went aft to let go some ropes; I cannot state positively.

Q. You did all that before the vessels separated?

A. No.

Q. I asked you what you did between the time you got on deck and the time the vessels separated?

A. I did nothing.

Q. Your vessel was still in motion when you came out and saw them in contact?

A. I could not swear positively that she was still in motion; she certainly had not the motion she had in going through the water before the collision; whether she was entirely still I cannot state.

Q. How could you tell what her motion was before the collision, when you were in the galley?

222 A. Not positively.

Q. Then she was going ahead when you first saw the vessels in contact?

A. I cannot state positively; it is my impression and belief that she was moving—that she had not entirely stopped.

Q. Did you notice in what direction she was going?

The WITNESS. The steamer?

The COUNSEL. Yes.

A. Not particularly.

Q. Did you notice whether her bow was swinging either way?

A. No, sir; I did not pay any attention to that.

Q. You did not notice whether the bows of either vessel swung either way from the time you first saw them until the boats separated?

A. Yes; I noticed the bows of the schooner after the separation.

Q. I am speaking of the time during which they were in contact, and until the time they separated; did you see the bow of either vessel swing either way?

A. That was such a very short time——

Q. I do not care about that; do not reason it; tell me the fact, did you notice it or did you not—that is all that I want to know?

A. I cannot say now that I did notice it.

Q. You had no difficulty you say in seeing the shore?

A. No difficulty whatever.

Q. How far should you judge it was to the shore?

A. I should judge it was four miles; it might have been half a mile more than that.

Q. Did you see any landmarks along the shore when you looked along there?

A. I saw houses.

Q. Did you know what houses they were?

A. No, sir.

223 Q. The houses that you saw, did you see together at one point?

A. No, sir.

Q. How many houses did you see?

A. Well, I wish to correct that last statement; I saw a village, a little town.

Q. And that is the only prominent point which you saw on the shore—this village or town?

A. And the Highlands of Nevesink.

Q. You took notice of those?

A. Yes.

Q. Did you take notice of those before the vessels separated?

A. Yes, I did.

Q. Then your attention was not directed forward all the time, from the time you came out until the vessels separated?

A. Yes, sir; it would be looking forward: I could pay attention to the whole of it and see the whole of it by looking forward.

Q. Did you not have to look round behind you to see the Highlands?

A. No, sir.

Q. Do you know where the collision happened?

A. On Squam Beach, I think it is called.

Q. As you came out and went forward, and saw those vessels in contact, do you say that you could see the Highlands right before you?

A. Not directly in front.

Q. You had to look behind you, had you not?

A. No, sir; I had to cast my eyes a little to one side, but still I could take it in at a glance.

Q. How far were the Highlands behind you—could you judge?

A. Well, they were abaft the beam of the steamer.

Q. How far were the vessels apart when you noticed any change in the speed of the steamer?

A. About ten or fifteen feet.

Q. You swear to that positively, do you?

224 A. I can swear to that; yes, sir.

Q. Then what change in the speed of the steamer did you notice?

A. I noticed the steamer slowed.

Q. How far was the steamer away from the schooner when she stopped?

The WITNESS. When she stopped entirely?

The COUNSEL. Yes.

A. She appeared to be about the sixteenth part of a mile—not any great distance.

Q. How many feet?

A. Well, my education is almost too limited to state how many feet that would be.

Q. How many yards, or how many rods, or how many fathoms was it?

A. She might have been one hundred and fifty yards, as near as I can judge.

Q. Do you swear to that with any degree of positiveness?

A. No, sir; I could not do it.

Q. Are you a good judge of distances?

A. No, sir; I am not a specially good judge.

Q. Did you see, from the time the vessels separated up to that time, the bow of the steamer swing either way?

A. Yes.

Q. Which way did it swing?

A. It was swinging off shore.

Q. Did you notice the schooner after you separated?

A. Yes; particularly.

Q. What was the first thing you did after you saw the vessels in contact?

A. I let go some ropes.

Q. How long was that after you came out on deck?

A. Four or five minutes.

Q. Was it as long as that?

A. I cannot state positively.

Q. Had the steamer stopped at that time?

A. I cannot state positively.

225 Q. Had the vessels separated?

A. The vessels had separated.

Q. What ropes did you attend to?

A. I could not say positively.

Q. How long were you attending to the ropes?

A. A very short time.

Q. Then what did you do?

A. I went forward to the bows.

Q. What did you do there?

A. I went there for the purpose of ascertaining what amount of damage the steamer had received, so as to calculate my own chances.

Q. Was the steamer then in motion?

A. She was stopped at that time—nearly so.

Q. On what vessel are you employed now?

A. On the same vessel, sir.

Q. And have been since the collision?

A. Yes.

Q. Acting as cook?

A. Yes.
Q. And you have acted as cook on vessels for how many years?
A. Fifteen years.
Q. Doing nothing else?
A. Doing nothing else—cook and steward.

Redirect examination by Mr. VANSANTVOORD:

Q. When you heard the shock of the collision, did you come out at once?
(Objected to.)
A. Yes.
Q. How far, according to your estimate, had you walked when you saw the schooner, and observed her direction?
A. 8 feet; 8 to 10 feet; I could not state positively to a foot or two.
Q. And how fast did you walk?
A. Very fast; as fast as possible.

226 Q. Then, was the interval between your hearing the shock of the collision and the time when you saw the direction of this schooner any longer than it took you to walk out of the galley to the place where you saw the schooner?

(Objected to.)
A. No.
Q. It was no longer than that?
A. No; it was no longer than that.
Q. Mr. Wilcox asked you if you noticed the sails of the schooner?
A. Yes.
Q. But he did not ask you what was their condition?
A. No, sir.
Q. Will you state what you did see?
A. To the best of my belief, they were shaking at the time, sir; I am positive they were shaking.
Q. You noticed, then, whether they were shaking or not?
A. Yes.
Q. You are positive that they were shaking?
A. Yes, I feel positive that they were shaking.
Q. At the time, did you notice how the schooner was heading in reference to the land; were you sufficiently free from any excitement to make a cool observation?
(Objected to.)
A. Yes, sir.
Q. And was the observation which you made a cool observation?
(Objected to.)
A. Yes, sir.

Recross-examination by Mr. WILCOX:

Q. Did you notice your own sails?
A. No, sir.
Q. Why was your attention called to the sails of the schooner?
A. Because they were directly in front of me; I could not help it.

227 Q. How many sails you did see?
A. To the best of my belief, the schooner was under full sail, with the exception of her gaff-topsails.

Q. That does not answer my question. How many sails did you see?
A. Four, positively.
Q. Tell me what sails did you see.
A. I saw the fore-staysail, the foresail, and mainsail, and—I do not

Q. You swear to that positively, do you?
224 A. I can swear to that; yes, sir.
Q. Then what change in the speed of the steamer did you notice?
A. I noticed the steamer slowed.
Q. How far was the steamer away from the schooner when she stopped?
The WITNESS. When she stopped entirely?
The COUNSEL. Yes.
A. She appeared to be about the sixteenth part of a mile—not any great distance.
Q. How many feet?
A. Well, my education is almost too limited to state how many feet that would be.
Q. How many yards, or how many rods, or how many fathoms was it?
A. She might have been one hundred and fifty yards, as near as I can judge.
Q. Do you swear to that with any degree of positiveness?
A. No, sir; I could not do it.
Q. Are you a good judge of distances?
A. No, sir; I am not a specially good judge.
Q. Did you see, from the time the vessels separated up to that time, the bow of the steamer swing either way?
A. Yes.
Q. Which way did it swing?
A. It was swinging off shore.
Q. Did you notice the schooner after you separated?
A. Yes; particularly.
Q. What was the first thing you did after you saw the vessels in contact?
A. I let go some ropes.
Q. How long was that after you came out on deck?
A. Four or five minutes.
Q. Was it as long as that?
A. I cannot state positively.
Q. Had the steamer stopped at that time?
A. I cannot state positively.
225 Q. Had the vessels separated?
A. The vessels had separated.
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A. I could not say positively.
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Q. You are positive that they were shaking?
A. Yes, I feel positive that they were shaking.
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(Objected to.)
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Q. That does not answer my question. How many sails did you see?
A. Four, positively.
Q. Tell me what sails did you see.
A. I saw the fore-staysail, the foresail, and mainsail, and—I do not

exactly know the nautical name for the aftersail of a three-masted schooner—the mizzen.

Q. You swear positively that you saw and noticed particularly all those sails when you first saw the vessels in contact?

A. Yes.

Q. And you swear positively that they were all shaking at that time?

A. Yes, they were all shaking at that time.

Q. How long did you continue to watch the sails shake?

A. Not more than a minute.

Q. Were they shaking when you went to the rope?

A. No, sir.

Q. Did you notice their condition when you did go to the rope?

A. I saw she was in a sinking condition.

Q. Did you notice the sails?

A. I noticed her sails were getting full of wind.

Q. When you went to the ropes?

A. When I went to the ropes the sails of the schooner, the bows of the schooner, had paid off.

Q. You noticed them particularly?

A. Yes.

Q. All that while you had not noticed your own sails at all?

A. I did not pay any particular attention to our own sails.

Q. You are not able to state anything about the condition of those sails?

A. No, sir.

Q. You swear positively that the vessels remained in actual contact for four minutes?

228 A. No, sir.

Mr. Vansantvoord desired it noted that he objected to the assumption in the question that the witness swore to a thing when he had not sworn to it.

Q. How long a time will you swear positively that you saw the vessels in contact?

A. I could not swear positively.

Q. Anywhere near?

A. Within a few minutes.

Q. There is no "judgment" about that at all?

A. No, but I cannot swear positively—that is, not to a second of time.

Mr. VANSANTVOORD. What he wants is your best judgment.

The WITNESS. I could state that.

Q. Give us your best recollection as to how long a time you saw the vessels in direct contact before they separated?

A. Two and a half to three minutes.

GEORGE T. ALLEN.

Sworn to before me this 5th day of May, 1877.

HENRY T. WING,

Notary Public for Kings Co.; Certificate filed in N. Y. Co.

THOMAS JONES sworn and examined by Mr. VANSANTVOORD:

Q. Are you a master mariner?

A. Yes.

Q. Have you had experience as a master of coasting steamers between this port (New York) and the south?

A. Yes.

Q. What experience?
A. Twelve years.
Q. And before that had you been a seaman?
A. Yes.
229 Q. And on what vessels—I mean what kind of vessels?
A. Sailing ships.
Q. Are you master of the steamer Benefactor now?
A. Yes.
Q. Were you on board the Benefactor at the time of the collision with the schooner Susan Wright on the 26th of February, 1875?
A. No, sir.
Q. Nor anywhere in sight of the collision?
A. No, sir; nowhere near it.
Q. Had you been master of the Benefactor before that?
A. Yes.
Q. How long?
A. About three years.
Q. And how long have you been master of her since then?
A. It will be two years next month—June; I had charge of her for some time before Captain Wood died, and then he came on, and I think it will be two years next month since he died.
Q. Then you were commander of her before Captain Wood was in command?
A. Yes.
Q. And you have been in command of her since the death of Captain Wood?
A. Yes.
Q. And you last went on board of her some time in June, 1875?
A. I think it must have been later than June, when I come to think of it; I think it was in August; I do not remember exactly now, but it will be two years either in July or August; I think it must have been August when I come to think of it, because I was in the Gulf Stream, I know, in June.
Q. Was it in August, 1875?
A. Yes, August, 1875.
230 Q. And since that time you have been her commander?
A. Yes.
Q. What was the business of the Benefactor?
A. Freighting.
Q. Between what ports had the Benefactor been employed?
A. Between Wilmington and New York, Philadelphia and New York, and Morehead City and New York; she had been once in the Gulf, at Galveston, but only once.
Q. When you were on board of her, she sailed from New York to where?
A. To Wilmington and also to Philadelphia—from New York. In the winter time most generally to Philadelphia; and in the summer time to Wilmington.
Q. Did she carry passengers?
A. No, sir.
Q. What description of vessel was she? Was she a steam-propeller?
A. Yes, a steam-propeller.
Q. Was she furnished with sails?
A. Yes, furnished with three sails.
Q. What sails were they?
A. Mainsail, foresail, and jib.

Q. On what mast was the mainsail?
A. On the mainmast.
Q. And the foresail?
A. On the foremast.
Q. And the jib?
A. The jib was on the foremast also, forward.

By Mr. WILCOX:

Q. Did you say you were master of the ship before Captain Woods?
A. Yes, sir.
Q. And Captain Woods was there about how long?
A. About six months.
Q. You were on her how long before Captain Woods came on her?
231 A. About two years.
Q. And you left when Woods came on?
A. Yes.
Q. And when Woods died you went back again?
A. Yes.

By Mr. VANSANTVOORD:

Q. How large was that mainsail, relative to the other sails?
(Objected to because the witness was not on board the vessel at the time of the collision.)
A. It was nearly one-third larger than the foresail—about one-third larger, and about one-half larger than the jib.
Q. How far apart is the mast upon which the foresail is rigged and the mast upon which the mainsail is rigged?
A. About eighty feet.
Q. What is the length of the Benefactor?
A. The length over all is 175 feet.
Q. What is the shape of her hull?
A. It is a shapely hull to look at, but a very flat hull.
Q. Flat-bottomed?
A. Flat-bottomed; she draws a light draught of water; you could not tell from the looks of the ship but what she is a real fine-looking ship; she is very wide; she has 36 feet beam, which is an extraordinary width for such a length.
Q. Where is the situation of the pilot-house?
A. It is about 55 or 56 feet from the bow.
Q. And the forecastle, where the lookout is placed, is where?
A. It is on the bow of the vessel, what we call the forecastle; the forecastle is supposed to be always at the forward part of the ship, the nearest thing to the stem.
Q. And the place where the lookout is placed is on the forecastle?
(Objected to.)
232 A. Yes; it is one flush deck, with a house on it.
Q. Had this jib, as it was when you were on the vessel, before the collision and as it has been since the collision, a bonnet on it?
(Objected to.)
A. Yes; it has a bonnet.
Q. Describe what this bonnet is.
A. It is a piece of the sail, attached to the sail; it is from eight to ten feet from the foot of the sail, upwards, with lacings, so that we can take it out in case of bad weather, with too much wind for the whole sail, and it reduces the sail nearly one-third by taking that bonnet out of it.

Q. Then, is it a piece of canvas attached to the foot of the jib, which can be removed from the jib?

A. Yes.

Q. And so reduce the quantity of the sail without the necessity of reefing it?

A. Yes.

Q. That is precisely what the bonnet is?

A. Yes, sir.

Q. And there was a bonnet which could be attached to this sail when you were on the Benefactor, before the collision?

A. Yes.

Q. And there has been ever since?

A. Yes.

Q. As that sail was rigged before the collision and as it is rigged since the collision, how high up from the deck is the foot of this bonnet?

(Objected to.)

A. Well, I could not exactly tell, but about nine feet; nine to ten feet, probably.

Q. Nine feet from the deck?

A. Yes, all of that.

Q. Forward of the pilot-house is there a stairway down into the forecastle?

(Objected to.)

A. Yes.

233 Q. And over the stairway is there a narrow companion-way with a roof?

A. Yes.

Q. How high is the top of that roof from the deck?

A. About five feet.

Q. Have you measured that?

A. Well, not particularly; I should say it is not over five or much under five; it comes up about here of me (as high as his chest).

Q. How high does the sail, when this bonnet is on, swing over the top of this companion-way?

A. It is four feet clear of that.

Q. And when that sail is full, how high is the foot of the sail above the deck?

A. Then it is over on one side, and of course when the sail is full of wind it raises it up still higher.

Q. As that sail was rigged before the collision and as it has been since, was there anything in it to obstruct the view over either bow of the ship?

A. No, sir; we do not have it rigged that way; it cannot obstruct the view from the pilot-house at all.

Q. Standing in the pilot-house, with that sail as it was and is rigged, when full, was there anything to obstruct the view from the pilot-house anywhere around the horizon?

A. No, sir.

Q. Now, will you explain how the foresail is rigged with reference to the swing of the foot of the foresail?

A. That is what we call a lug sail; it has no boom; we haul it aft with the sheet; and when we want to shift it over we have to take the sail in again, and shift the sheet over on to the other side; that we have to take in every time we haul it over, mostly; it has a brail.

Q. Does it swing over the pilot-house?

A. No, there is no swing to it at all; it is a sail that we have to brail.

234 By Mr. WILCOX:

Q. Is it a fore-and-aft sail, or a square sail?

A. A fore-and-aft sail.

By Mr. VANSANTVOORD:

Q. What is the height of the deck of the pilot-house where the wheel is, above the forecastle?

A. About three feet, I think it is.

Q. Have you ever measured that?

A. No, I have not particularly measured it; there are two common steps to go into it; I suppose it is about two and a half to three feet.

Q. What is the rate of speed of the Benefactor?

(Objected to.)

A. Well, she varies a good deal in her speed, sir; her average speed would be about seven and a half to eight miles an hour; that is the average; we can get more out of her by steam and sail when there is wind for the sail.

Q. What is the highest rate of speed that you have ever been able to get on the Benefactor with steam and sails?

A. The highest speed I ever got out of her was about ten and one half miles an hour; that I have got out of her for twelve hours running.

Q. That is with steam and sail?

A. Steam and sail, and plenty of wind.

Q. What is her ordinary rate?

A. Seven and one half is her average rate, loaded.

Q. The ship is built for carrying freight?

A. Yes.

Q. Is she built for speed?

A. No, I do not think they had much reference to speed when they put the steam power in her.

Q. Has she any of the qualities of a racer?

A. No, she has no qualities for racing at all.

Q. Did you ever beat anything in speed?

A. I do not like to answer that question.

Q. In coasting off the Squam Beach with vessels of the description
235 of the Benefactor with the wind strong from off the land, what is the usual course as to the distance off the shore?

(Objected to.)

A. The distance would be from a mile to three miles, according to how a man feels about it.

Q. It would be a matter of judgment with him from a mile to three miles or four miles?

A. As a general thing, with the wind off the coast, we try to make as smooth water as possible, and the wind off the land makes smooth water; and flat vessels, like her, make considerable lee-way; so we generally try to make her course along the land as much as possible.

Q. Would it be good seamanship, with a vessel of that description, with the wind blowing strong from shore, to go a very great distance out from land in passing?

(Objected to.)

A. No, sir; it would not be good seamanship at all; it would be very bad seamanship.

Q. Why would it not be good seamanship?

A. Because you would be in rougher water and your vessel would not be handled so well, and you could not get the speed out of her that you would in smoother water; there are many objections to it; the further off the land you get, the rougher the water gets; every mile you go off the land, you get in rougher water; if you keep her close to the land, with prevailing westerly winds that we have, we know pretty nearly how they are going to end and how we are going to keep her.

Q. Then, the vessel, if kept closer in, finds smoother water than by going further out?

A. Yes.

Q. And she is more easily managed, more easily navigable, and in better shape?

A. Yes.

236 Q. And that is the course which is usually followed by vessels of this description—from three to four miles out?

(Objected to.)

A. With the wind from the land; yes.

Q. Suppose the Benefactor, bound down off Squam, with the wind strong on her starboard side, meeting a vessel bound up, other things being equal, which would be the proper side to pass the vessel?

(Objected to.)

A. In that case, in a vessel like the Benefactor, I should be very apt to port my helm in letting her pass me, the port side.

Q. The question merely calls for which side you would pass, other things being equal?

A. The port.

Q. That is, you would pass inside, to windward?

A. Yes, of course; to let the vessel pass on the port side.

Q. With the wind strong on your starboard side, to which side, to port or starboard, can the Benefactor change with most facility?

(Objected to.)

A. To port; with a port helm she changes easier than she does with a starboard helm, with the wind on her starboard side.

Q. Why is that?

A. Well, she has what they call a right-handed wheel, and the port-helm acts upon the ship quicker, because, suppose she had no helm at all, with her propeller going, she would come round naturally herself that way.

Q. Would this disproportionately large m insail have an influence on her?

A. Oh, yes; the mainsail would have a little influence, too.

Q. Then, is the result, that in passing off to windward she would be under better control for any movement to windward in passing off on that side?

A. Yes; she would be.

237 Q. What is it necessary to do on the Benefactor when going along under steam, and with the mainsail and the jib set, in order to come round—to turn to port with the utmost possible quickness?

A. Put the helm to starboard and lower the mainsail down; that would have a tendency to make her turn.

Q. Without lowering the peak of the mainsail at the time your helm was put to starboard, in the case supposed, would she pay off with any quickness?

A. No, sir; she would be pretty slow about it.

Q. And how long would it take to bring her round to port or to leeward in the case put—on a starboard helm, and with the peak of the mainsail lowered?

A. Well, it would assit her a good deal by lowering the mainsail; I cannot tell exactly how long it would take a vessel; a vessel hangs on her helm sometimes that way, especially those flat-bottomed vessels.

Q. According to your best judgment?

A. I could, perhaps, get her off in the course of four or five minutes—probably four or five minutes.

Q. But it would take a considerable time upon an emergency arising which would make it necessary to resort to that manœuvre?

(Objected to.)

A. Yes.

Q. Did you know Captain Woods, who was in command of the Benefactor?

A. Yes.

Q. Will you please state what you know as to his competency and skill as a master and navigator of a vessel?

(Objected to.)

A. Well, I have never sailed with the man, but I have always thought h at he was a very competent ship-master; he had been to sea long enough, certainly, to learn his business. I knew him to be a thorough sailor, a good sailor.

238 Q. Do you know whether he had a good reputation as a ship-master?

A. Oh, yes; he had a good reputation.

Q. How does the shore trend off above and below Squam?

A. The general course from Barnegats to the Highlands is about north by east and south by west, by compass, not allowing for variations.

Q. On the Benefactor, with the wind strong enough from off the land to make it necessary for sailing vessels to take in their topsails, what would be the sailing-direction of the Benefactor on a course south-south-west?

(Objected to.)

A. She would not make much better than a south by west course with the wind off the land and sails set; under the circumstances, she would make about a point of leeway.

Q. Do you know Captain Mount, of the schooner Susan Wright?

A. Yes; I have been introduced to him; I know him by sight. I know nothing much about him.

Q. Did Captain Mount come on board of your vessel?

A. Yes; I have seen him aboard my vessel since I have been in here.

Q. When was that?

A. I really do not know. I think it must be about a year ago; something about that time.

Q. Was it after the death of Captain Woods?

A. Oh, yes. I did not take charge of the vessel until after the death of Captain Woods.

Q. It was after you took charge of the vessel?

A. Yes.

Q. Did he say what he came on board for?

(Mr. Wilcox for the libellants objected, and Mr. Tweed for the co-libellants.)

A. No; he did not tell me what he came on board for; if you want me to state what he did say——

(Objected to.)

239 Q. Did he say anything about your jib?

A. Yes.

Q. What did he say about that?

(Objected to.)

A. He asked me if I could see under the foot of the jib from the pilot house. I told him certainly we had a jib high enough to see from under it; he asked me several other things, but I never answered him; he wanted to talk a good deal; he made himself known as master of the Susan Wright, and wanted to talk a good deal about the collision.

Q. Did he say on board the ship that he had come there to see whether the man in the pilot-house could see under that jib when it was set?

A. No; he did not say anything; he merely asked me the question if I could see under it. I did not know what he came on board for. I saw the man aboard ship. I was standing on the wharf, and when he came from the ship again he asked me that question; on the wharf he made himself known to me, and said he was captain of the schooner, and asked me if I could see clear under the foot of the jib out of the pilot-house.

Q. What did you tell him?

A. I told him yes, certainly, we carried a jib high enough so as to see everything clear of it.

Q. Then you remember distinctly that he did ask you if you could see under the jib from the pilot house?

A. Yes.

Q. Did he go forward to look at the jib?

A. I saw him on deck. I was not on the deck of the vessel when I had the conversation with him; I was on the wharf. I saw the man on deck. I did not know who he was then. I saw him passing from one side of the vessel to the other.

Q. Was he looking at the jib there?

(Objected to by Mr. Tweed.)

A. Well, yes, he was observing things in general, and noting things there.

240 Cross-examined by Mr. WILCOX:

Q. You say the Benefactor is of a peculiar construction from the fact that her bottom is flat, and that that enabled her to hug the shore more than other vessels?

A. With a certain kind of wind, sir.

Q. And she generally did hug the shore more than other vessels on account of taking advantage of the wind?

A. Yes, when the wind is off the land.

Q. Does the Benefactor answer her helm readily?

A. Yes, she does; very readily, indeed.

Q. Running under full speed in slack water, how far would she run before stopping dead still, from the time her bell was given to stop?

A. When the vessel is deep loaded she will run a little further, because she is heavier in the water.

Q. I assume under ordinary circumstances, with an ordinary cargo, slack water, and running with full headway.

A. Well, she will run a half a mile without stopping still after stopping the engine.

Q. How long had you known Captain Woods?

A. The first I knew of Captain Woods was when he came to take charge of the—not the Benefactor, but the Regulator; that was in June, I think, of 1874; I have known him since.

Q. You never sailed with him?

A. No, sir.

Q. Do you know of his having any other collisions except this?

A. No, sir; I do not know as he ever had any other collisions but this.

Q. Did the fact of this collision have any effect on you as to rating him as a good master?

A. I do not think if I had been there myself I could have done any different to what he did, under the circumstances; I do not blame him in the least bit for acting as he did.

241 Q. I have not asked you that; I ask you if the fact of this collision has had any effect on you as to fixing his rate as a good sea master?

A. No, sir; it has no effect whatever.

(Mr. Wilcox moved to strike out the answer last but one, as not responsive to the question.)

Q. Do you think it is good seamanship to attempt to cross the bows of a vessel close hauled?

A. No, sir; that is not good seamanship, to attempt to cross the bows of a vessel close hauled.

Q. You say the Benefactor minds her helm readily?

A. Yes; as readily as any other of her class or description.

Q. You mean of that peculiar construction?

A. Of that peculiar construction; as I said before, they will rather hang sometimes, you know, with a sail on them—an aftersail—and a starboard helm.

Q. How is it as to making leeway; does she make more or less leeway than ordinary vessels?

A. Oh, yes; a great deal more than any other steamer that goes out of New York except the Regulator, which is her sister vessel; they are nearly alike; they do not draw any water; we go to sea with five feet of water forward and eight feet aft; there is about eighteen feet of her hull above water, and it is a big hull; the bottom is as flat as this table almost, and it is natural to suppose that any sails on her, no matter how the wind is, will carry her to leeward all the time; hence, we have to change our course differently from that of any other vessel, to counteract that leeway and make our course good.

Q. You would have to make calculations for that leeway in passing other vessels?

A. Yes.

Q. So as to give a vessel, with the right of way, plenty of room to pass?

A. Plenty of room to pass.

Q. How low could that bonnet on that jib be hauled down?

242 The WITNESS. By taking it out of the jib altogether, do you mean?

The COUNSEL. How close to the deck?

A. All you have to do is to lower the halyards down, and lower it right down to the deck; it cannot be fixed on to the jib in any other way but what it is; it is laced on to the foot of the jib; you have to take it out altogether to take it away.

Q. But the whole thing can be brought right down close to the deck?

A. Yes, by lowering the halyards you can pull the whole sail down.

Q. How far is it possible to haul that bonnet down under ordinary sail?

A. You cannot have it any lower.

Q. Any lower than what?

A. When the sail is full of wind, the foot is probably 15 feet from the deck, but when it is standing right straight with the vessel, amidships, it is probably 8 or 9 feet clear of the deck; probably 9 feet; about that.

Q. Could you not haul it down lower than that and still sail the vessel?

A. No, sir; because we cannot see then at all; if it was lower, it would be of no use—it would be a screen.

Q. What is there to obstruct hauling it down lower than 8 or 9 feet from the deck?

A. It obstructs our view.

Q. That is the only thing that prevents it?

A. No; that is not the only thing that prevents it; you can have it down altogether if you wish.

Q. And still sail the vessel?

A. We can sail the vessel without it.

Q. But still you could not sail the vessel with it down?

A. No; it would not set; the sail is made to set there; and if it i not set there it will not set anywhere else.

243 Q. It amounts to this, then: that you do not generally haul it down more than 8 or 9 feet from the deck of the vessel, because it obstructs the view from the pilot-house?

(Objected to by Mr. Vansantvoord, because the question assumes that that sail was ever hauled down nearer to the deck, when it was set, than 8 or 9 feet.)

A. Yes.

Redirect-examination by Mr. VANSANTVOORD:

Q. Is that jib attached to a stay?

A. It runs on a stay and hanks; the little hooks that go round the stay are called hanks.

Q. And the stay goes from where to where?

A. It goes from about 9 feet from the stem of the vessel up to the mast-head on the stay.

Q. And you can haul it up by halyards?

A. Yes.

Q. And let it go by halyards?

A. No; we haul it down by the down-haul.

Q. When that sail is pulled up in position—set—can you pull the foot of the sail nearer to the deck than 8 or 9 feet?

A. No, sir.

Q. It could not be done before this collision, and it cannot be done now, unless the stay breaks?

A. Unless the halyards break or slack down.

Q. And when the halyards are lowered or slacked down, then the sail is not set?

A. No, sir.

By Mr. WILCOX:

Q. Then you lower the sails by slacking the halyards?

A. Yes.

Q. How far is the inner edge of the jib ahead of the pilot-house when the jib is set?

A. About 16 feet.

By Mr. VANSANTVOORD:

244 Q. You said that it was not good seamanship to cross ahead of a schooner close hauled; is there any want of seamanship in crossing ahead of a schooner close-hauled when you are at the distance of five or six miles?

A. No, sir; at that distance there is no danger, of course; we were talking about close contact.

Q. Mr. Wilcox did not say any such thing, did he?

A. No.

Q. But you assumed it?

A. Yes.

Q. Is there any danger in passing inside of a schooner close-hauled at the distance of three or two miles?

A. No, sir; there is no danger at two miles even; we often have to do it along the coast here.

Q. And is there any danger, if she is properly navigated, in crossing, except in dangerous proximity?

A. That is a question that has to be acted upon judgment; a man that is in charge of a vessel—a pilot or captain—must use judgment in such cases as those; you cannot tell exactly what you may do; one man may judge one thing, and another man another.

Q. You would not, unless some exigency arose, attempt to cross very close to the bow of a vessel close hauled?

A. No.

Q. Or even if she had the wind free, with a steamer?

A. I would use my judgment about it; if I thought that I was free and clear of the vessel, and something obstructed me on the other side. There are difficulties in answering such questions as those, for you must be placed in the situation in order to see them for yourself, and a man cannot answer such questions unless he is placed in such a situation.

Q. If a sailing vessel was hauling in a direction across your bows close on, then you might make an effort to clear her the other way?

A. I would stop my wheel, and do everything I could to clear her; stop the vessel's headway, and do everything I could.

245 Q. You would do the best you could under the circumstances?

A. I would not try to cross her bow in close proximity, of course.

Q. When they were close together, within some few lengths?

A. Yes.

By Mr. WILCOX:

Q. With the Benefactor you generally try to give a close-hauled vessel a wide berth, do you not?

A. No, sir; we do not calculate on that; we consider that we have as good a right to sail along this coast as schooners have, and we give them a comfortable berth; what I mean is, that I meet sixty vessels here sometimes in the course of fifteen minutes.

Q. But there being no vessels in the way, you being at the wheel of the Benefactor, and there being nothing to prevent you, you would make the effort to give her a wide berth, would you not?

The WITNESS. What do you mean by a "wide berth"—twice the length of a ship?

Mr. WILCOX. I have not asked that; I mean "wide" in the relative sense; would you attempt to "shave" her where there was plenty of room?

The WITNESS. No, sir; I would not attempt to go any nearer than two or three lengths of the vessel anyhow; but in some cases we have to go closer than that—night times, for instance.

By Mr. VANSANTVOORD:

Q. In the night time, do you calculate to give sailing vessels a wider berth than you do in the day time?

A. You cannot judge anything in the night time; you may see a light a short way off, and you cannot tell how far you are off from it; no man can judge how far he is off from a light in the night time.

246 Q. You did not answer my question; my question is, whether in the night time you calculate to give a vessel a wider berth than you do in the day time; you have given a reason for giving her a wider berth in the night time.

A. Well, we generally try to have the lights pretty well on one side or the other; if a red light or a green light is passing us, we genorally try to pass showing them the same light as he shows us, and we get well clear of him; if he shows a green light I generally show him a green light.

THOMAS JONES.

Sworn to before me this 5th day of May, 1877.

HENRY T. WING,
Notary Public for Kings Co.,
with Certif. filed in N. Y. Co.

EDWARD C. REED, sworn and examined by Mr. VANSANTVOORD:

Q. Are you a master mariner?

A. I am, sir.

Q. In what class of vessels have you been master?

A. Sailing vessels and steam vessels.

Q. On what voyages—between what ports?

A. For fourteen years, almost in every port of the world; for sixteen years on the southern coast of the United States.

Q. And on the eastern coast as well?

A. Not higher than New York.

Q. From New York south?

A. To New Orleans—all along the coast.

Q. And the different ports intermediate?

A. Yes.

Q. Of what vessel are you now master?

A. Of the steamship Columbus.

Q. Where is she employed?

A. Between New York and Havana.

Q. Do you know the Benefactor?

A. I do.

247 Q. Do you know what course vessels of the description of the Benefactor pursue in passing off the coast bound down, with the wind off the land, as to distance out?

(Objected to.)

A. They hug the shore close, a mile or two miles.

Q. Is there any reason for their keeping in shore, rather than going a greater distance out—any nautical reason?

A. To make the passage quicker on account of smooth water.

Q. Are they under better control in smooth water?

A. Yes.

Q. They find smooth water inside, and it is rougher outside?

A. Yes; and the faster the steamer goes, the better control she is under.

Q. Is a vessel of the description of the Benefactor, with the wind blowing from the land so strongly as to make it necessary for vessels to take in their topsails, as liable to lee-way close in as further out?

A. No, sir; she would have less lee-way close in to land than she would have further out.

Q. Then closer in she would have smoother water?

A. Yes.

Q. She would make better speed?

A. Yes.

Q. She would be under better control?

A. Yes.

Q. Than at a greater distance?

A. Yes.

Q. How is it with the larger class of vessels there, such as the Columbus, as to distance out?

(Objected to.)

A. We pursue the same course; it does not assist us as much as it does a smaller vessel, but still it assists us; every steamer likes to have smooth water.

Q. Then you pursue a course closer in rather than one further out, for the same reasons which influence a vessel of the description of the Benefactor, with a lighter draught and a flat bottom?

248 A. Yes.

Q. Were you acquainted with Captain Woods of the Benefactor?

A. I was, sir.

Q. Do you know what was his character as a master and a navigator as to competency?

A. I do; he bore a very excellent reputation as a captain of coasting steamers.

Q. Do you know whether he was a man of skill and prudence?

(Objected to.)

A. Yes.

Q. How long had you been acquainted with him in 1875?

A. About three years.

Q. Suppose a steamship, of the description of the Benefactor, bound down, off the coast, off Squam, with the wind blowing off the land so strongly as to make it necessary for vessels coming up to take in th topsails, meeting such vessel, which would be the proper side to pass her—whether to windward or to leeward, other things being equal?

(Objected to.)

A. So far as propriety is concerned I do not know of any propriety; we go by certain rules; it is generally understood that a sailing vessel keeps her course, and the steamer must keep out of the way; meeting a vessel coming up like that, I would give her room; in nine cases out of ten a schooner will port its helm when it gets near a steamer; I would port my helm, because if I did put off, the chances are ten to one that he would put his helm a-port and cross my bow.

Q. Has that in practice been your experience in meeting vessels?
(Objected to.)

A. Nine out of ten schooners, instead of keeping their course when meeting a steamship, will put their helm hard aport.

Q. What is the meaning of "close-hauled by the wind," and "full and by," in nautical language?

249 A. The meaning is to sail the vessel as near the wind as the sails will allow it.

Q. As near to the wind without shaking; is that it?

A. Without shaking; of course.

Q. Those terms then, in nautical language, are of the same import?

A. The same thing exactly; "close-hauled by the wind," or "full and by," are the same thing.

Q. When a vessel is sailing as near the wind as six points by compass, is she said to be close hauled?

(Objected to.)

A. It depends upon the rig of the vessel; a square-rigged vessel which carries yards, which sails six points to the wind, is close-hauled; schooners lie up as close as five points.

Q. Then a square-rigged vessel, sailing within six points, or at six points from the wind, if that is as close as she can sail to the wind, is close-hauled?

A. Yes.

Q. If a schooner is sailing within five or six points of the wind, and that is as close as she can sail on a given wind, she is close-hauled?

A. Yes.

Q. Can a sailing-vessel, with the wind strong enough to make it necessary to take in her topsails, and in a rough sea, make a sailing course as close to the wind as the same schooner with full sails set and in smooth water?

A. No, sir.

Q. Why not?

A. Well, for one reason, she would have more lee-way; and for another reason, no sailor who knows his business sails his vessels so close to the wind when it is blowing hard under a heavy sea, because it strains his masts and rigging too much; and for another reason, his ship would not make much headway.

Q. Suppose you were bound down, discovering a vessel coming up, on a wind blowing off from the Jersey shore, and blowing so hard
250 as to make it necessary to take the topsails in and the outer jib, how far would you expect that vessel to stand off from the line of her direction by the compass when sailing close-hauled?

(Objected to.)

A. She would make about a point and a half to two points of the true course of what she is steering.

Q. You have had sufficient experience of sailing vessels to know that in the case supposed, with the wind as strong as I have stated, the sailing direction of the vessel cannot be kept up to the steering direction by compass?

A. No, sir; not by the wind.

Cross-examined by Mr. TWEED:

Q. Did you ever sail the Benefactor?

A. No, sir.

Q. Did you ever go a voyage on board of her?

A. Not a voyage; I have been on board of her in port, but never at sea.

Q. Did you ever sail with Captain Woods, or ever went upon a voyage with him anywhere?

A. No, sir.

Q. You are acquainted with the rules established by law for the navigation of sailing and steam vessels, are you not?

A. Yes.

Q. You know that those rules require that a sailing vessel in proximity to a steamer should keep her course, do you not?

A. Yes.

Q. Now, do I understand you to say that you are in the habit of navigating your vessel with reference to the assumption that sailing vessels in proximity to steamers will not keep their course?

A. That has been my experience of sixteen years in command of a steamer.

Q. And you navigate your ship then upon the assumption that a sailing vessel will not keep her course, instead of upon the assumption that a sailing vessel will keep her course?

251 A. I have watched them.

Q. Answer my question, if you please; do you navigate your vessel upon the assumption that a sailing vessel in proximity to you will not keep her course?

A. Upon the assumption that nine-tenths of the captains that navigate schooners do not know their business—do not know the laws established to prevent collisions.

Q. Then I understand you that you do, in navigating your vessel, assume that a sailing vessel in promixity to your vessel will not keep her course, and you govern yourself accordingly?

A. Yes.

Q. How long has it been your habit to conduct the navigation of vessels that way?

A. Ever since I have been commanding a steamer.

Q. How long is that?

A. Sixteen years.

Q. How long have you been in the employment of this company?

A. Four years next September.

Q. And you have been conducting your navigation of that company's steamships according to the same rules?

A. The same rules, and never met with an accident.

(The last clause of the answer is objected to, and Mr. Tweed moves to strike it out.)

Q. Did you ever have any conversation with Captain Woods about the propriety of navigating steamships upon this theory?

A. No.

Q. So that you do not know whether he adopted the same theory or not in navigation?

A. No, sir.

Q. Did you ever communicate your views in regard to navigation to any officers of the steamship company?

A. No, sir; except my own—the officers on board my own ships.

252 Q. Those are established rules of your ship?

A. Yes.

Q. Did you ever communicate to the executive officers of the steamship company your views in regard to navigation?

A. I am not a port officer; I am only the captain of the Columbus.

Q. I ask you, did you ever do so?

A. It is not expected that the captain of any steamship will give advice to any other captain, although they may be employed by the same company.

Q. Excuse me, but still you do not answer my question; did you ever do so?

A. No.

Q. And you never communicated it to your employers, either?

A. No.

Q. Do you know whether your course of navigation as you have described it is the course of navigation habitually pursued on the steamships on your line?

A. I do not, sir.

Q. Have you ever sailed a fore-and-aft vessel?

A. No.

Q. The number of points off the wind which would be close-hauled for a sailing vessel depends somewhat upon the character and rig of the vessel itself, does it not?

A. Yes.

Q. Varying considerably in different vessels?

A. According to how a vessel is rigged, square or fore-and-aft.

Q. Does it not also vary in fore and-aft vessels according to their shape and rig?

A. Not much.

Q. You have had no experience, I understand you to say, in navigating fore-and-aft vessels?

A. Not practical experience in navigating such vessels.

Q. You have never navigated such a vessel?

253 A. No.

Q. Have you navigated a square-rigged vessel?

A. Yes.

Q. Propelled entirely by sail?

A. Yes.

Q. And your knowledge of sailing vessels is confined to that?

A. Yes.

Q. You know that some fore-and-aft vessels will lie within six points of the wind, and some only within six, do you not?

(Objected to.)

A. I do not, sir.

Q. In your judgment, and so far as your knowledge upon the subject extends, what is the navigation, with respect to closeness to the wind, in the sailing of fore-and-aft vessels; between what limits does it vary?

A. A fore-and-aft vessel is about a point closer to the wind than a square-rigged vessel.

Q. Between what limits does the number of points within which a fore-and-aft vessel can sail to the wind vary?

A. I would say between five and four.

Q. Between four and five points?

A. Making allowance, though, at the same time, for sea and wind.

Q. Do you mean to say that it is possible for an ordinary fore-and-aft vessel, under ordinary circumstances, to sail within four points of the wind?

A. Four and a half points; yes, I have seen them often do it.

Q. Do you mean to say that every fore-and-aft vessel can sail within five points of the wind?

A. Yes.
Q. Every one?
A. Yes.
Q. In your judgment?
A. Yes.

254 Q. But, as I understand your previous testimony, you say that in a heavy wind a vessel will necessarily fall off one and a half to two points further from the wind than she could sail under ordinary circumstances; is that so?

A. She will not "fall off;" she will not sail as close.
Q. She will be kept off under ordinary circumstances of navigation?
A. Yes; she will not fall off; "falling off" means that it is done involuntarily. But a captain in heavy weather will not sail a ship so close to the wind as in fine weather. He could keep her just as close, but he would make no headway; he would drift.
Q. So that in point of fact, in accordance with the customary and habitual mode of navigation, under such circumstances she would be kept one and a half to two points further off from the wind than what would be close-hauled in fine weather?
A. Yes.

Redirect examination by Mr. VAN SANTVOORD:

Q. In other words, in ordinary navigation it is not practicable to keep a vessel as close to the wind as her steering course by the compass when the wind is strong?
A. No, sir.
Q. Is an order to the man at the wheel to sail close-hauled, or by the wind, or full and by, any order as to course by compass?
(Objected to.)
A. No, it is no course.

By Mr. OWEN:

Q. Are you in the employment of the New York and Wilmington Steamship Company?
A. No, sir.
Q. When you testify that you have been "in the employment of this company for four years," what company have you reference to?

255 A. I had reference to the Havana and New York Steamship Company, of which the president of the Wilmington Company is also president; that is the reason I say "our company."

By Mr. TWEED:

Q. The two steamship companies are substantially under one common management?
A. Yes.

EDWARD C. REED.

Sworn to before me this 5th day of May, 1877.

HENRY T. WING.
Notary Public for Kings Co.,
with certificate filed in N. Y. Co.

Proctors for claimant give notice to proctors for libellants that they do not propose to read on the new trial in the circuit court the testimony of the witness Charles McNamee as a witness on behalf of the claimants and appellant.

Adjourned to May 8, 1877, at 2 o'clock p. m.

MAY 8, 1877, at 2 p. m.

Parties present.
Examination closed.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

I, Henry T. Wing, a notary public duly commissioned and sworn, dwelling in the city of Brooklyn, county of Kings, and State of New York (with a certificate filed in the county of New York), duly authorized by virtue of the acts of Congress of the United States to take depositions and to administer oaths in civil causes depending in the courts of the United States, do hereby certify that the reason for taking
256 the foregoing depositions is, and the fact is, the witnesses are material and necessary in the cause in the caption of the said depositions named, and that the said cause is now pending on appeal in the circuit court of the United States for the eastern district of New York, second circuit, from the decree of the district court of said district.

I further certify that due notification of the time and place of taking said depositions signed by me was given to the proctors for the appellees to be present at the taking of said depositions, and to put interrogatories, if he or they might think fit, as appears from said notices, with proof of service thereof hereto annexed, and that I was attended by the proctors for the appellees, and by the witnesses, who were of sound mind and lawful age; and the witnesses were by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions were reduced to writing by a stenographer, by consent of the proctors for the respective parties, in my presence and in the presence of the witnesses, from their statements, and were subscribed by each of the witnesses in my presence.

And I do further certify that I have delivered the said depositions, with the consent of the proctors for the appellees, to the appellants' proctors, for the purpose of being printed and afterwards to be filed by them.

And I also certify that I am not of counsel nor attorney for either of the parties in the said depositions and captions named, nor in any way interested in the event of the causes named in said caption.

In testimony whereof I have hereunto set my hand and seal this eighth day of May, in the year one thousand eight hundred and seventy-seven.

[L. S.] HENRY T. WING,
Notary Public for Kings Co.

Cert. filed in N. Y. Co.

257 At a stated term of the circuit court of the United States, held for the eastern district of New York, for the hearing of appeals in admiralty, at the city of Brooklyn, in said district, on the sixteenth day of May, A. D. 1877.

Present, Hon. Ward Hunt, associate justice Supreme Court of the United States.

WILLIAM H. MOUNT, ADAM PATRIDGE, AND others, libellants & appellees,
vs.
THE STEAMSHIP BENEFACTOR, HER ENGINES, &c., the New York & Wilmington Steamship Company, claimants & appellants.

And now the above named claimant and appellant appears before this

honorable court, and by leave of the court files a motion that the testimony of the witness Charles McNamee, called on behalf of the claimant on the trial in the district court, under circumstances appearing in the apostles from the said district court, be struck from the record as the testimony of a witness to be read on its behalf on the hearing of the appeal in this court.

That the ground of this motion, to be heard when the cause is called on for a hearing, is that the hearing on the appeal being a new trial, the claimant is under no obligation to recall said witness, or read his
258 testimony as taken below on its behalf, on the hearing of the cause on the appeal and other grounds appearing on the records.

I certify the foregoing to be a true copy of the original on file in my office.

{ SEAL OF THE U. S. }
{ DIS. CT. E. D. OF N. Y. } B. LINCOLN BENEDICT,
Clerk.

(Endorsed:) Filed by leave of the court May 16, 1877. Owen & Gray, proctors for claimant. C. Van Santvoord, of counsel.

259 At a stated term of the district court of the United States of America, for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 18th day of May, in the year of our Lord one thousand eight hundred and seventy-seven.

Present, the Honorable Charles L. Benedict, district judge.

WM. H. MOUNT ET AL.
vs.
THE STEAMSHIP BENEFACTOR, HER ENGINES, &c., &c., &c.

Cause called. Hearing ordered.

Appearances:

Mr. Wilcox, for libellants and appellees.
" Tweed " co-libellants " "
Mr. Van Santvoord, for claimants and appellants.
" E. L. Owen, " " "

Motion *of* strike out testimony of Charles McNamee, argued and denied.

Cause argued and submitted.

260 U. S. circuit court, eastern district of New York. In the second circuit.

WILLIAM H. MOUNT AND OTHERS, Libellants and appellees,
vs.
THE STEAMSHIP BENEFACTOR, HER ENGINES, etc., the New York & Wilmington Steamship Company, claimants and appellants.

Findings of fact.

HUNT, J.:

1. The collision between the steamship Benefactor and the schooner Susan Wright, in controversy in this suit, took place a little after ten

o'clock in the forenoon of the 26th day of February, 1875, off Squan Beach, New Jersey, and about three miles distant therefrom.

2. The weather at and prior to the time of the collision was
261 fine and clear, the wind about west-northwest and strong; the steamship was bound from New York to Wilmington, and the schooner bound from Matanzas to New York.

3. The steamship was observed by those in charge of the schooner when six or seven miles distant therefrom, and from twenty to thirty minutes before the collision. At that time the steamship bore a point or two off the starboard bow of the schooner. The schooner was close-hauled, sailing on a course about north by west, at the rate of about eight miles an hour. The steamship was proceeding on a course about south-southwest at the rate of about ten miles an hour, with her sails set, and the wind free, and making much lee-way.

4. At this time the courses of the two vessels were such as to cross each other, if continued, and such as to bring the two vessels either together or into close proximity to each other, and the two vessels were proceeding in such directions as to involve risk of collision.

5. On the windward side of the two vessels, and about three miles distant therefrom, was the New Jersey shore, trending at that point about north by east and south by west, and on the leeward side was the open ocean, without any obstruction to safe navigation. There was nothing to prevent the steamship from seasonably changing her course so as to pass either to windward or to leeward of the schooner and give her a wide berth.

6. From the time when the steamship was observed, as above stated, she was watched by those in charge of the schooner, and the schooner was kept close hauled upon her course. The steamship was also kept upon her course, without slacking speed or stopping, until the vessels were only a few lengths apart and a collision was imminent, when the peak of her mainsail was lowered, her engines slowed
262 and stopped, and an effort made to pass to leeward of the schooner, but without success.

7. After the steamship was within a few lengths of the schooner and a collision was imminent, the captain of the schooner attempted to avoid the impending collision or lessen its force by porting the helm of the schooner, but after putting the schooner's wheel only about two spokes to port, he was driven away therefrom by the nearer and dangerous approach of the steamship, which struck the schooner on her starboard quarter, in consequence of which the schooner sank almost immediately, with her valuable cargo.

8. The schooner kept her course until the steamship was in close proximity and the collision was imminent, and if there was any change in the schooner's course after that, and before the collision actually took place, it was very slight; had no effect in producing the collision, and was made in extremis.

9. At the time of the collision, the schooner was of the value of $17,850, the cargo was of the value of $35,046.58; and both the vessel and cargo, by reason of the collision, became a total loss. The amount of damage sustained by William H. Mount, by reason of loss of and injury to his personal effects by the collison, was $1,283.85. The net freight lost by reason of the collision was $1,923.14. The amount of damages sustained by William Hirst, Charles Lukens, and John Collins, by reason of the loss of and injury to their personal effects, by reason of the collision, was $244, $165, and $182.15, respectively.

WARD HUNT.

263 *Conclusions of law.*

1. Upon the steamship and schooner discovering each other proceeding in such directions as to involve risk of collision, as stated in the foregoing findings of fact, it was the right and duty of the schooner to keep her course and the duty of the steamship to keep out of the way of the schooner, and the steamship was in fault in failing to perform that duty.

2. It was also the duty of the steamship, under the circumstances stated, to pursue a course which should not needlessly put the schooner in imminent peril, and the steamship was in fault in failing to perform that duty.

3. It was the duty of the steamship, before the time when she did so, to slacken her speed or stop, and the steamship was in fault in failing to perform that duty.

4. If when a collision had become imminent by reason of the fault of the steamship, any error was committed in extremis by those in charge of the schooner, the schooner is not responsible therefor.

5. The steamship had no right, under the circumstances stated, needlessly to place herself in such close proximity to the schooner that the error of a moment would bring destruction.

6. The collision was occasioned by the fault of the steamship, and the steamship should be condemned therefor.

7. The decree of the district court was right, and should be affirmed with costs.

WARD HUNT.

264 United States circuit court, eastern district of New York, in the second circuit.

WILLIAM H. MOUNT, ADAM PARTRIDGE, ET al., libellants and appellees,
vs.
THE STEAMSHIP BENEFACTOR, HER ENGINES, &c., The New York and Wilmington Steamship Company, claimants and appellants.

JUNE 11TH, 1877.

HUNT, J.:

I have signed seperate findings of the facts as I hold them to exist in this case, and of the conclusions of law as required by the statute.

My strong impressions upon the arguement are confirmed by a careful examination, and I have reached the conclusion stated without hesitation.

265 Nothing can be more clear than that the occurrence of a collission between a steamer and a schooner upon the open sea, in clear weather, in broad daylight, with no storms, the vessels sighting each other at a distance of seven or eight miles, and for twenty minutes or a half an hour, was the result of great negligence.

The duty of avoiding the collision belonged to the steamer, and she had the most abundant opportunity of doing it. The principal fault in the steamer was in not making the proper arrangement to avoid the schooner when first discovered. A very slight deviation from her course would have made the divergence so marked as to avoid all peril or alarm, and would not have produced any perceptable effect upon her own voyage. Instead of that, she pursued a course which, ac-

266 cording to her own evidence, would have carried her to the windward of the schooner a cable's length only, or seven hundred and twenty feet. The wheelsman of the steamer testifies that after he took the wheel the schooner was on her port bow, and he noticed that she kept off a little (i. e. ported her helm, carrying her to the east); that the captain ordered him to port the helm, which, he says, was done. He further says that if the schooner had kept this course and the steamer had kept her course, he would have passed the schooner on the port side, a cable's length from each other, that is, seven hundred and twenty feet (testimony of Nelson, fol. 335–357.) This with vessels where the conjoined speed equalled eighteen miles an hour was quite too close a calculation. An allowance of 30 seconds of time which could be absorbed by a slight excess of steam or a slight increase of
267 wind is very far from an exercise of reasonable prudence. The presence of a large steamer in such close proximity might well disturb the composure of the navigation of a smaller craft.

There is, really, but a single question of fact in the case, to wit, whether the schooner so deviated from her course as to justify the action of the steamer. It is by no means clear that the evidence given by the mate, Norwood, establishes such a justification; but I am disposed to rely upon the evidence of the captain of the schooner, which is clear and consistent throughout, and in apparent harmony with all the circumstances of the case. If his testimony is credited, there was no change, except in the moment of peril. He attempted to put his wheel aport, but did not succeed in his attempt. The emergency
268 compelled him to abandon the wheel and go to the forward part of the vessel. Whatever was done in this crisis, whether wise or otherwise, is not to be charged as a fault upon the captain. It is the fault of those who forced the emergency upon him. To the same effect is the evidence of the pilot of the schooner, McNamee.

WARD HUNT.

269 At a stated term of the circuit court of the United States for the eastern district of New York, in the second circuit, held at the court rooms of said court, in the city of Brooklyn, on the thirteenth day of June, A. D. 1877.

Present, Hon. Ward Hunt, Justice.

WILLIAM H. MOUNT, ADAM PARTRIDGE, Gordon D. White, Arion B. Longstreet, Denis You, Adam B. Johnson, Seneca Partridge, and Justice Nelson, and the Sun Mutual Insurance Company, The Union Mutual Insurance Company, and William Hirst, Charles Lukens, and John Collins, libellants and respondents,

vs.

THE STEAMSHIP BENEFACTOR, HER ENGINES, tackle &c., The New York and Wilmington Steamship Company, claimants and appellants.

270 The New York and Wilmington Steamship Company, the claimants in the above entitled suit, having appealed to this court from the decree heretofore made therein by the district court of the United States for the eastern district of New York, and bearing date the 21st

day of October, 1876, and the said appeal having duly come on to be heard before this court, after hearing Edward L. Owen and C. Van Santvoord, esquires, on behalf of the appellant, and Franklin A. Wilcox, Charles H. Tweed and Robert D. Benedict, esquires, on behalf of the respondents, and after due deliberation thereon, upon motion of Beebe, Wilcox and Hobbs, proctors for the libellants other than The Sun Mutual Insurance Company and The Union Mutual Insurance Company, and Evarts, Southmayd and Choate, proctors for said Sun Mutual Insur-
271 ance Company and Union Mutual Insurance Company, it is ordered, adjudged and decreed, that the said decree in said district court so appealed from be and the same is hereby in all respects affirmed with costs.

And it is further ordered, adjudged and decreed, that the libellant, William H. Mount, recover herein the sum of one thousand four hundred and twelve dollars and fifty-one cents, with interest thereon from the date of the said decree, amounting together to the sum of one thousand four hundred and seventy-six dollars and forty-two cents ($1,476\frac{42}{100}$); that the libellants William H. Mount, Adam Partridge, Gordon D. White, Arion B. Longstreet, Dennis You, Adam B. Johnson, Seneca Partridge and Justice Nelson recover herein the sum of twenty-two thousand two hundred and seventy-nine dollars and sixteen cents, with interest thereon from the date of said decree, amounting
272 altogether to the sum of twenty-three thousand two hundred and seventy-seven dollars and seventeen cents ($23,277\frac{17}{100}$); that the said co-libellants The Sun Mutual Insurance Company and The Union Mutual Insurance Company recover herein the sum of thirty-eight thousand six hundred and two dollars and ninety three cents, with interest thereon from the date of the said decree, amounting together to the sum of forty thousand three hundred and forty-nine dollars and forty six cents ($40,349\frac{46}{100}$), and also the further sum of seventy-eight dollars and twenty-five cents ($78\frac{25}{100}$), the costs of the said co-libellants herein as taxed, amounting altogether to the sum of forty thousand four hundred and twenty-seven dollars and seventy-one cents ($40,-427\frac{71}{100}$); that the said libellant William Hirst recover herein
273 the sum of two hundred and sixty-eight dollars and twenty-three cents, with interest thereon from the date of the said decree, amounting together to the sum of two hundred and eighty dollars and thirty-six cents ($280\frac{36}{100}$); that the said libellant Charles Lukens recover herein the sum of one hundred and eighty-one dollars and thirty-eight cents, with interest thereon from the date of the said decree, amounting together to the sum of one hundred and eighty nine dollars and fifty-nine cents ($189\frac{59}{100}$); that the said libellant John Collins recover herein the sum of two hundred dollars and twenty-three cents, with interest thereon from the date of the said decree, amounting together to the sum of two hundred and nine dollars and twenty-nine cents ($209\frac{29}{100}$); that the said libellants William Hirst, Charles Lu-
274 kens and John Collins recover herein the sum of eighty-nine dollars, their costs in the district court, with interest thereon from the date of said decree, amounting together to the sum of ninety-three dollars and two cents ($93\frac{02}{100}$); and that the said libellants William H. Mount, Adam Partridge, Gordon D. White, Arion B. Longstreet, Dennis You, Adam B. Johnson, Seneca Partridge, Justice Nelson, William Hirst, Charles Lukens and John Collins recover herein the sum of one hundred and thirty-three $\frac{75}{100}$ dollars, the amount of their costs in this court as taxed; and that the said steamship Benefactor, her engines, tackle, etc., be condemned therefor.

And it appearing to the court that heretofore and on or about the 23rd day of March, 1875, stipulations for costs in the usual form were
275 filed in the district court on behalf of The New York and Wilmington Steamship Company, owners of the said steamship Benefactor, her engines, tackle, &c., in the sum of two hundred and fifty dollars in each of the original suits in said decree in said district court mentioned, which stipulations were duly executed by the said The New York and Wilmington Steamship Company as principal, and Andrew Boardman and Frederick Butterfield as sureties; and it also appearing to the court that on or about the 23rd day of March, 1875, and under and in pursuance of the provisions of an order theretofore made in each of said suits and bearing date the 20th day of March, 1875, to which reference is made for its contents, the said claimant entered into and filed a stipulation in the appraised value of said steamship, to wit, the sum of forty
276 thousand dollars, with interest thereon from the said 23rd day of March, 1875, which said last mentioned stipulation was duly executed by the said The New York and Wilmington Steamship Company as principal, and Thomas Clyde, Andrew Boardman and Frederick Butterfield as sureties, all of which said stipulations, reference to which is hereby made as part of this decree, still remain in full force and effect.

And whereas it is provided in said order that such stipulations should be for the benefit of the libellants in both of said suits against said steamship in case they should establish the liability of said steamship and of all persons and parties who might by due proceedings in said district court show themselves entitled to liens upon said steamship by reason of the collision in the libels mentioned, and that upon the
277 entering into and filing such stipulation, the said steamship, her engines, etc., should be discharged from all liability for losses and damages occasioned to all parties for whose benefit said stipulations should be given, as by reference to said order will more fully appear.

And whereas no other libels or claims have been filed nor proceedings taken by any other parties than those mentioned in the libels above mentioned or included therein by petition or otherwise:

It is further ordered, adjudged and decreed that the said The New York and Wilmington Steamship Company as principal, and the said Andrew Boardman and Frederick Butterfield as sureties, pay into the registry of this court the amount of their said stipulations for costs,
278 to wit, the sum of five hundred dollars, with interest thereon from the date of the said decree, amounting together to the sum of five hundred and twenty-two dollars and sixty-three cents ($522\frac{63}{100}$). And that the said The New York and Wilmington Steamship Company as principal, and Thomas Clyde, Andrew Boardman and Frederick Butterfield as sureties, pay into the registry of this court the amount of said stipulation for value, with interest thereon from the 23rd day of March, 1875, to the date of the said decree in said district court, amounting as of that date to the sum of forty four thousand four hundred and seventeen dollars and ninety-one cents, and with interest thereon from the date of the said decree in the district court, amounting altogether to the sum of forty-six thousand four hundred and twenty-seven
279 dollars and fifty-two cents ($\$46{,}427\frac{52}{100}$), or show cause why execution should not issue against them, their goods, chattels and credits therefor.

And it is further ordered that upon the bond on appeal herein bearing date the day of February, 1877, and executed by the said the New York and Wilmington Steamship Company as principal, and Thomas Clyde, Frederick Butterfield, Andrew Boardman and William

P. Clyde as sureties, judgment be, and the same is hereby, entered in favor of the libellants, William H. Mount, Adam Partridge, Gordon D. White, Arion B. Longstreet, Dennis You, Adam B. Johnson, Seneca Partridge, Justice Nelson, The Sun Mutual Insurance Company, The Union Mutual Insurance Company, William Hirst, Charles Lukens and John Collins, against the said The New York and Wilmington Steamship Company, Frederick Butterfield, Andrew Boardman, Thomas Clyde and William P. Clyde, in the sum of forty-seven thousand one hundred and sixty-two dollars and fifteen cents ($47,162\frac{15}{100}$).

280

And it is further ordered, adjudged and decreed that unless an appeal be taken from this decree within the time limited by law for a stay of execution, the libellants have execution to obtain satisfaction of this decree, and that the clerk distribute the proceeds of said stipulations and of said bond among the libellants and co-libellants herein in proportion to the amounts of the several recoveries awarded to said libellants and co-libellants respectively in this decree.

WARD HUNT.

(Endorsed:) Final decree of affirmance. Filed and entered this 20th day of June, 1877.

281 *Bill of exceptions.*

U. S. circuit court eastern district of New York, in the second circuit.

WILLIAM H. MOUNT, ADAM PARTRIDGE, GORDON D. WHITE, ARION B. LONGSTREET, DENNIS YOU, ADAM B. JOHNSON, SENECA B. PARTRIDGE, JUSTICE NELSON, THE SUN MUTUAL INSURANCE COMPANY, THE UNION MUTUAL INSURANCE COMPANY, WILLIAM HIRST, CHARLES LUKEN and JOHN COLLINS, libellants and appellees,

vs.

THE STEAMSHIP BENEFACTOR, HER ENGINES, &c., and The New York and Wilmington Steamship Company, claimants & appellants.

This cause came on to trial before the Hon. Ward Hunt, associate justice of the Supreme Court of the United States, at a term of *of* the circuit court of the United States held in the city of Brooklyn, in and for the eastern district of New York, in the second circuit, on the 19th day of May, A. D. 1877, on an appeal by the claimant above named from the final decree of the district court of the United States in the above entitled suit.

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The claimant on the trial by leave of the court filed amended answers in the circuit court as contained in the record.

Counsel for the respective parties read the testimony taken and the depositions read on the trial in the district court as contained in the apostles or record transmitted from the district to the circuit court. Counsel for each party reading the testimony taken and depositions read on its own behalf, the party on whose behalf the testimony was taken, whether oral or by deposition, reading the direct, and the counsel for the other party reading the cross, each side also reading the statements of counsel on its behalf and admissions as contained in the said record of the proceedings of the trial in the district court here-

283 to annexed, except that counsel for claimant did not offer in evidence or read on behalf of claimant the testimony of Charles McNamee, a witness called and sworn in the district court for claimant as contained in the said apostles or record.

In respect to the testimony of this witness, the following proceedings took place on the trial in the circuit court:

Counsel for the claimant moved to strike out the testimony of this witness McNamee, as contained in the record, as the testimony of a witness to be read on its behalf on the trial in the circuit court. The counsel for libellants claimed that the testimony of the witness was evidence in the case. The court inquired of the said counsel last mentioned if they intended to read the same, to which they replied that they

284 did, and the evidence of the witness, direct and cross, was thereupon read as the testimony of a witness offered on behalf of the libellant on the trial in the circuit court as the same is contained in the record annexed hereto.

Counsel for claimant offered and read in evidence on its behalf the testimony of George T. Allen, Thomas Jones, and Edward C. Reed, taken on its behalf on appeal in the circuit court, as contained in their depositions on file in the circuit court, and as it appears upon the record of such testimony hereto annexed, counsel for the claimant reading the direct and the counsel for libellants the cross-examination.

And here the testimony was closed, the above containing all the evidence that was put in on the question of fault for the collision.

285 The counsel for the claimant thereupon proposed on its behalf the following statement of facts and conclusions of law to be found by the court:

AS MATTER OF FACT.

The place of the collision in question was off Squam Beach, which is eighteen miles or thereabouts above Barnegat Inlet, on the coast of New Jersey, and at a distance off shore between three and four miles.

The coast line off the place of the collision trends N. by E. and S. by W. (See Coast Survey map.)

The time of the collision was between 10 and 11 o'clock a. m., of 26th February, 1875.

The wind was blowing a strong breeze from off the land from west-northwest, and it was clear weather, so that the direction and course of vessels approaching or passing could be seen continuously from long distances off if keeping a reasonable lookout.

The Benefactor was a steam propeller furnished with sails, a mainsail, foresail, and jib, built to carry freight, and employed in the coasting trade as a carrier of freight between New York and Wilmington, North Carolina. Her length was 175 feet. She was flat-bottomed and drawing a light draft of water. Her average rate of speed, when loaded, was from seven and one-half to eight miles an hour. Her highest rate of speed, with steam and sails with plenty of wind, was about ten and one-half miles, and her usual route in passing off the coast off which the collision took place, and the one required by the exigencies of safe and convenient navigation, with the wind strong from off the land, was three to four miles out and not further out than that.

She had left New York about six o'clock in the morning, bound for Wilmington, and when approaching to pass off the place where the collision took place, on her usual and a proper course, as to distance off and along the line of the coast, with the wind off the land, bound down; the

captain and mate were in the pilot-house of the Benefactor, attending to her navigation and closely watching the schooner, and there was another man at the wheel, and a good lookout on the forecastle, attending to his duties.

The Susan Wright had left Matanzas, Cuba, with a valuable cargo of sugar, on or about 17th February, 1875, bound for New York, and when first particularly observed from the steamer, at a distance off from the steamer of from two to three miles, or more, the steamer was steering in a course or direction by the compass S. S. W., making a
286 sailing course S. by west, along and parallel with the line of the coast, inside, that is, on the land or windward side of the sailing course of the schooner, which, when first seen from the steamer, at a distance off of three miles, was off the lee or port bow of the steamer, and thereafter was off to leeward of the steamer, as the latter was passing down inside of the schooner, the latter on a wind strong from west-northwest and hauling to northward, and making a sailing course to leeward of that of the steamer, on which, if reasonably kept by the schooner, the steamer following along the line of the shore, on a sailing course south by west, would have passed off to windward of the schooner a proper and safe distance, and at a distance off of from 300 to 400 yards.

That on a closer approach to pass off said schooner to windward, the schooner was observed to be bearing off to leeward, which might be from porting her helm, or from neglect of her helm, and so notice to master of the steamer, who was watching her, of negligent navigation on board the schooner, and thereupon the helm of the steamer was put to port, and her course or direction changed to southwest half west, in toward the land, and on the relative courses upon which the two vessels were then standing, the steamer would have passed off to windward at a safe and proper distance, and a distance off of 400 to 500 yards.

While the man at the wheel of the steamer was porting his helm, and before time enough to steady it, the schooner on a starboard helm was observed changing her course from a course off her proper course bound up and in toward the land and from a course to leeward of that of the steamer, on which the steamer would have passed her in entire and absolute safety, to one across the bow of the steamer in toward the land and continuing in that course across the bow of the steamer.

That in the extremity caused by this change of course and direction of the schooner to a course across the bows of the steamer from a course and direction to leeward upon which the steamer would have passed clear of the schooner at a distance off unquestionably sufficient for entire and absolute safety to the schooner, the helm of the steamer was put a starboard and the peak of her mainsail, by order of her captain, was lowered to come round to windward as rapidly as possible to clear the schooner off to leeward by passing under her stern, and then immediately before the collision the engine was stopped, but the steamer, in the extremity produced by this sudden change to a course and direction of the schooner across the bows of the steamer, was not able to escape the collision which followed after the helm of the steamer had been put to starboard, and the steamer's course and direction changed was as far as possible to leeward to clear the schooner then standing in towards the shore across the steamer's bow by passing under her stern, and
287 the steamer's engine had been stopped, the stem of the steamer striking against the starboard quarter of the schooner near the corner aft, the schooner at that time standing across, heading directly on to the land almost exactly west by north, her sails shaking in the wind.

That the schooner's steering and making from a course farther out to leeward and to leeward of the course of the steamer, a course across the bows of the steamer in towards the land head on, thereby causing the collision, was not caused by nor justly attributable to any previous close proximity of the steamer in passing off to windward of the schooner, but solely through the want of a proper lookout on board the schooner, as the steamer was approaching to pass off of, and the improper and negligent navigation of the schooner.

AS CONCLUSIONS OF LAW.

I. As between the steamer and sailing vessel the obligation of the former to keep clear of the latter did not require a deviation by the steamer bound down along the coast so far off from her usual course or from one required by the exigencies of her safe or convenient navigation as to render a collision impossible from a sudden or improper change of course or negligent navigation of the sailing vessel in passing.

Neither when the steamer was approaching to pass off to windward of the schooner's course and keeping a good lookout and exercising all needful precautions and circumspection from a distance when such precautions and circumspection became necessary, did it absolve the schooner from the correlative duty to keep on her proper course reasonably without unnecessarily interposing obstacles to the steamer's performing its duty.

II. For the collision caused as the steamer was passing off to windward by a change of course and direction of the schooner across the bows of the steamer and inshore off from the course on which she was bound, and off from her proper course, and off from a course on which, as the steamer was passing, the steamer would have cleared her in entire safety, and through the want of a proper lookout on the schooner, or the exercise of proper circumspection on her part, the schooner, and not the steamer, should be held responsible.

III. The steamer is not responsible for the collision or the damages therefrom, occasioned by her inability to clear the schooner in an extremity produced by the wrongful change of course and negligent navigation of the schooner.

IV. The decree of the district court should be reversed, and the libels dismissed with costs.

288 The said judge thereafter and after time taken for consideration filed with the clerk of the circuit court findings of fact and conclusions of law as found by the court, of which the following is a copy:

FINDINGS OF FACT.

1. The collision between the steamship Benefactor and the schooner Susan Wright, in controversy in this suit, took place a little after ten o'clock in the forenoon of the 26th day of February, 1875, off Squan Beach, New Jersey, and about three miles distant therefrom.

2. The weather at and prior to the time of the collision was fine
289 and clear, the wind about west northwest, and strong ~~but somewhat baffling~~. The steamship was bound from New York to Wilmington, and the schooner from Matanzas to New York.

3. The steamship was observed by those in charge of the schooner when ~~two~~ seven or ~~three~~ miles distant therefrom. At that time the steamship bore a point or two off the starboard bow of the schooner. The schoo-

ner was close-hauled, sailing on a course about north by west, at the rate of about eight miles an hour. The steamship was proceeding on a course about south southwest at the rate of about ten miles an hour, with her sails set and the wind free, and making much leeway.

4. At this time the courses of the two vessels were such as to cross each other, if continued, and such as to bring the two vessels either together or into close proximity to each other, and the two vessels were proceeding in such directions as to involve risk of collision.

5. On the windward side of the two vessels, and about three miles distant therefrom, was the New Jersey shore, trending at that point about north by east and south by west, and on the leeward side was the open ocean, without any obstruction to safe navigation. There was nothing to prevent the steamship from seasonably changing her course so as to pass either to windward or to leeward of the schooner and give her a wide berth.

6. From the time when the steamship was observed, as above stated, she was watched by those in charge of the schooner, and the schooner was kept close hauled upon her course. The steamship was also kept upon her course, without slacking speed or stopping until the vessels were only a few lengths apart and a collision was imminent, when
290 the peak of her mainsail was lowered, her engines slowed and stopped, and an effort made to pass to leeward of the schooner, but without success.

7. After the steamship was within a few lengths of the schooner and a collision was imminent the captain of the schooner attempted to avoid the impending collision or lessen its force by porting the helm of the schooner, but after putting the schooner's wheel only about two spokes to port he was driven away therefrom by the nearer and dangerous approach of the steamship which struck the schooner on her starboard quarter, in consequence of which the schooner sank almost immediately with her valuable cargo.

8. The schooner kept her course until the steamship was in close proximity, and the collision was imminent, and if there was any change in the schooner's course after that and before the collision actually took place it was very slight, had no effect in producing the collision and was made in extremis.

9. At the time of the collision the schooner was of the value of $17,850, the cargo was of the value of $35,046.58; and both the vessel and cargo, by reason of the collision, became a total loss. The amount of damage sustained by William H. Mount, by reason of loss of and injury to his personal effects by the collision, was $1,283.85. The net freight lost by reason of the collision was $1,923.14. The amount of damages sustained by William Hirst, Charles Lukens, and John Collins, by reason of the loss of and injury to their personal effects by reason of the collision was $244,, $165, and $182.15 respectively.

WARD HUNT.

291 CONCLUSIONS OF LAW.

1. Upon the steamship and schooner discovering each other proceeding in such directions as to involve risk of collision, as stated in the foregoing findings of fact, it was the right and duty of the schooner to keep her course, and the duty of the steamship to keep out of the way of the schooner, and the steamship was in fault in failing to perform that duty.

2. It was also the duty of the steamship, under the circumstances

stated, to pursue a course which should not needlessly put the schooner in imminent peril, and the steamship was in fault in failing to perform that duty.

3. It was the duty of the steamship, before the time when she did so, to slacken her speed or stop, and the steamship was in fault in failing to perform that duty.

4. If when a collision had become imminent, by reason of the fault of the steamship, any error was committed in extremis by those in charge of the schooner, the schooner is not responsible therefor.

5. The steamship had no right, under the circumstances stated, needlessly to place herself in such close proximity to the schooner that the error of a moment would bring destruction.

6. The collision was occasioned by the fault of the steamship, and the steamship should be condemned therefor.

7. The decree of the district court was right, and should be affirmed with costs.

WARD HUNT.

292 And also filed with the said clerk his opinion, as follows:

HUNT, J.:

I have signed separate findings of the facts as I hold them to exist in this case, and of the conclusions of law as required by statute.

My strong impressions upon the argument are confirmed by a careful examination, and I have reached the conclusion stated without hesitation.

Nothing can be more clear than that the occurrence of a collision between a steamer and a schooner upon the open sea in clear weather, in broad daylight, with no storms, the vessels sighting each other at a distance of seven or eight miles, and for twenty minutes or a half an hour, was the result of great negligence.

293 The duty of avoiding the collision belonged to the steamer, and she had the most abundant opportunity of doing it. The principal fault in the steamer was not making the proper arrang'ment to avoid the schooner when first discerned.

A very slight deviation from her course would have made the divergence so marked as to avoid all peril or alarm, and would not have produced any perceptible effect upon her own voyage. Instead of that she pursues a course which, according to her own evidence, would have carried her to windward of the schooner a cable length only, or seven hundred and twenty feet.

The wheelsman of the steamer testifies that after he took the wheel the schooner was on her port bow, and he noticed that she kept off a little, (i. e., ported her helm, carrying her to the east); that the cap-

294 tain ordered him to port the helm, which he says was done. He further says, that if the schooner had kept her course, and the steamer had kept her course, he would have passed the schooner on the port side, a cable's length from each other; that is, seven hundred and twenty feet; (testimony of Nelson, 335, 357.) This, with vessels whose combined speed equalled eighteen miles an hour, was quite too close a calculation. An allowance of thirty seconds of time, which could be absorbed by a slight excess of steam or slight increase of wind, is very far from an exercise of reasonable prudence. The presence of a large steamer in such close proximity, might well disturb the composure of the navigation of a smaller craft.

There is really but a single question of fact in the case, viz, whether

the schooner so deviated from her course as to justify the action
295 of the steamer. It is by no means clear that the evidence given by the mate Norwood establishes such a justification, but I am disposed to rely upon the evidence of the captain of the schooner, which is clear and consistent throughout, and in apparent harmony with all the circumstances of the case. If his testimony is credited there was no change except in the moment of peril. He attempted to put his wheel aport, but did not succeed in the attempt. The emergency compelled him to abandon the wheel and go to the forward part of the vessel.

Whatever was done in this crisis, whether wise or otherwise, is not to be charged as a fault upon the captain. It is the fault of those who forced the emergency upon him.

296 To the same effect is the evidence of the pilot of the schooner, McNamee.

WARD HUNT.

And thereafter, after the entry of the decree as set forth in the record, upon notice thereof, on the 25th day of June, 1877, the counsel for the claimant filed in the office of the clerk of said court and served upon the libellants' counsel a proposed bill of exceptions, containing the following exceptions:

FIRST EXCEPTION. For that the said judge did not find as matters of fact, as proposed by the claimant on the trial, as follows:

The place of the collision in question was off Squam Beach, which is eighteen miles or thereabouts above Barnegat Inlet, on the coast of New Jersey, and at a distance off shore between three and four miles.

The coast line off the place of the collision trends N. by E. and S. by W. (see Coast Survey map.)

The time of the collision was between 10 and 11 o'clock a. m. of 26th February, 1875.

The wind was blowing a strong breeze from off the land from
297 west northwest; and it was clear weather, so that the direction and course of vessels approaching or passing could be seen continuously from long distances off if keeping a reasonable lookout.

The Benefactor was a steam propeller, furnished with sails, a mainsail, foresail, and jib, built to carry freight, and employed in the coasting trade as a carrier of freight between New York and Wilmington, North Carolina. Her length was 175 feet. She was flat bottomed and drawing a light draft of water. Her average rate of speed, when loaded, was from seven and one-half to eight miles an hour. Her highest rate of speed, with steam and sails with plenty of wind, was about ten and one-half miles, and her usual route in passing off the coast off which the collision took place, and the one required by the exigencies of safe and convenient navigation, with the wind strong from off the land, was three to four miles out and not further out than that.

She had left New York about six o'clock in the morning, bound for Wilmington, and when approaching to pass off the place where the collision took place, on her usual, and a proper course, as to distance off and along the line of the coast, with the wind off the land, bound down, the captain and mate were in the pilot-house of the Benefactor, attending to her navigation and closely watching the schooner, and there was another man at the wheel, and a good lookout on the forecastle, attending to his duties.

The Susan Wright had left Matanzas, Cuba, with a valuable cargo of

sugar, on or about 17th February, 1875, bound for New York, and when first particularly observed from the steamer, at a distance off from the steamer of from two to three miles, or more, the steamer was steering in a course or direction by the compass S. S.W., making a sailing course S. by west, along and parallel with the line of the coast, inside, that is, on the land or windward side of the sailing course of the schooner, which, when first seen from the steamer, at a distance off of three
298 miles, was off the lee or port bow of the steamer, and thereafter was off to leeward of the steamer, as the latter was passing down inside of the schooner, the latter on a wind strong from west northwest and hauling to northward, and making a sailing course to leeward of that of the steamer, on which, if reasonably kept by the schooner, the steamer following along the line of the shore, on a sailing course south by west, would have passed off to windward of the schooner a proper and safe distance, and at a distance off of from 300 to 400 yards.

That on a closer approach to pass off said schooner to windward, the schooner was observed to be bearing off to leeward, which might be from porting her helm, or from neglect of her helm, and so notice to master of the steamer, who was watching her, of negligent navigation on board the schooner, and thereupon the helm of the steamer was put to port, and her course or direction changed to southwest half west, in toward the land. and on the relative courses upon which the two vessels were then standing, the steamer would have passed off to windward at a safe and proper distance, and a distance off of 400 to 500 yards.

While the man at the wheel of the steamer was porting his helm, and before time enough to steady it, the schooner on a starboard helm was observed changing her course from a course off her proper course, bound up and in toward the land and from a course to leeward of that of the steamer, on which the steamer would have passed her in entire and absolute safety, to one across the bow of the steamer in toward the land and continuing in that course across the bow of the steamer.

That in the extremity caused by this change of course and direction of the schooner to a course across the bows of the steamer from a course and direction to leeward upon which the steamer would have passed clear of the schooner at a distance off unquestionably sufficient for entire and absolute safety to the schooner.

299 SECOND EXCEPTION. For that said judge did not hold and decide as matters of law as proposed and requested by claimant on the trial that

As between the steamer and the sailing vessel the obligation of the former to keep clear of the latter did not require a deviation by the steamer bound down along the coast so far off from her usual course, or from one required by the exigencies of her safe or convenient navigation as to render a collision impossible from a sudden or improper change of course or negligent navigation of the sailing vessel in passing.

Neither when the steamer was approaching to pass off to windward of the schooner's course, and keeping a good lookout and exercising all needful precautions and circumspection from a distance,
300 when such precautions and circumspection became necessary, did it absolve the schooner from the correlative duty to keep on her proper course reasonably without unnecessarily interposing obstacles to the steamer's performing its duty.

THIRD EXCEPTION. For that said judge did not hold and decide as matters of law as proposed and requested by claimant on the trial as follows:

For the collision, caused as the steamer was passing off to windward

by a change of course and direction of the schooner across the bows of the steamer and inshore off from the course on which she was bound, and off from her proper course, and off from a courselon which, as
301 the steamer was passing, the steamer would have ceared her in entire safety, and through the want of a proper lookout on the schooner, or the exercise of proper circumspection on her part, the schooner, and not the steamer, should be held responsible.

FOURTH EXCEPTION. For that said judge did not hold and decide as matter of law as proposed and requested by claimant on the trial that the steamer is not responsible for the collision or the damages therefrom occasioned by her inability to clear the schooner in an extremity produced by the wrongful change of course and negligent navigation of the schooner.

FIFTH EXCEPTION. For that upon the case as presented on the pleadings and proofs in the circuit court the said judge did not direct
302 that the decree of the district court be reversed and the libels dismissed with costs.

SIXTH EXCEPTION. The claimant excepts to the findings of fact as found by the said judge so far as the same purport that the schooner was not on a relative course to that of the steamship when the two vessels were at a distance off and apart of from two to three miles; that the steamship would have passed to windward of the schooner at a distance so far off, portside to portside, as to be beyond reach or risk of collision, and that from thenceforth the steamship was not on a course to pass off the schooner to windward of her, portside to portside, at a distance so far off as to be beyond reach and risk of a collision until a change of
303 course of the schooner on a nearer approach of the two vessels to pass from a course to pass off to leeward of the steamship to a course across the bows of the steamer, upon which the schooner going across as aforesaid stood on a course in such close proximity to the steamer's course as put it out of the power of the steamer by the exercise of such precautionary measures as were resorted to by her by starboarding and stopping, or by any other precautionary measures in her power in the extremity produced by the aforesaid change of course of the schooner, to avoid said collision as not only against the evidence according to its fair and reasonable purport, but for its being without any evidence to support it.

SEVENTH EXCEPTION. The claimant excepts also to the find-
304 ings of fact in the third division of the findings of fact, that the schooner at the time therein referred to, close hauled, was sailing on a course about north by west; and also to the fourth finding in said division, that the steamer on any approach to pass off said schooner was making much or any leeway, as being without any evidence to support it.

EIGHTH EXCEPTION. The claimant further excepts to the finding in the fourth subdivision of the findings of the said judge, that at the time referred to therein the courses of the two vessels were such as to cross each other if continued, and such as to bring the two vessels either together or into close proximity to each other, and that the two ves-
305 sels were proceeding in such directions as to involve risk of collision is unsupported by any evidence; and further, that if there is any evidence sufficient to support such finding at the time referred to, and at the distance off at which the vessels then were, that such finding is wholly immaterial.

NINTH EXCEPTION. The claimant excepts to the findings in the fifth division of the findings of fact of the court in its purport, that on any

approach so near as to make precaution necessary to avoid collision under the circumstance of the broad daylight, that there were no obstructions in the cou'se of the schooner, with the wind hauling to northward, or other obstruction to prevent the steamship from changing her
306 course so as to pass to leeward of the schooner, or that there was either error or fault in the steamship proceeding on a course as she did to pass to windward of the schooner, as against the evidence and without any evidence to support it.

TENTH EXCEPTION. The claimant excepts to the findings in the sixth division of the findings by the court in its purport that a proper lookout as to the course of the steamer was kept on the said schooner; and also so far as it purports that any lookout whatever was kept on the schooner of the relative courses of the two vessels as they were about approaching; and also to the finding that as the two vessels were approach-
307 ing from the time referred to that the schooner was kept close hauled upon her course, and to each of said findings, as being without any evidence to support them.

The claimant also excepts to the further findings in the said division in its negativing the fact that the steamer's course was changed further to windward on the schooner's parting before a change of course of the schooner across the bows of the steamer, and in its negativing the fact that the occasion of the steamer's lowering her mainsail in the effort to pass to leeward of the schooner by starboarding her helm and stopping was not by reason of the schooner's standing across the bow of the steamship as aforesaid when the vessels were only a few lengths
308 apart, and the collision was imminent, was in consequence of the schooner's changing her course from a point of departure on which the steamship would have passed the schooner to windward of her course, so far off as to be beyond reach or risk of a collision, & thereafter standing on this last course was not only against the evidence, but without any evidence to support it.

ELEVENTH EXCEPTION. The claimant also excepts to the finding by the court in the seventh subdivision without a qualification referring the maneuvre of the captain of the schooner therein referred to in porting the helm of the schooner with a view to throw the schooner's
309 stern off to the time and position of the schooner standing across and passing the line of direction of the steamer as the steamer was coming round on the starboard helm to clear the schooner to leeward by reason of the schooner's crossing, on the ground of its misleading and confusing the evidence, and for its being without any evidence to support it without such qualification.

TWELFTH EXCEPTION. The claimant excepts to the finding of fact by the judge in the eight' division in its purport that the schooner kept her course from the time of first observation of the steamer until the steamship was in close proximity, as founded on an entire misapprehension of the whole scope and effect of the evidence, and also sepa-
310 rately for its being without any evidence to support it.

THIRTEENTH EXCEPTION. The claimant excepts to the several conclusions of law as found by the judge in their application to this case by reason of their and each of their being founded on an assumed state of facts which, so far as material to the decision of the case, are unwarranted by any evidence.

FOURTEENTH EXCEPTION. Claimants except for error in law to the ruling of the judge in his fifth conclusion of law that the steamship in approaching to pass, or in passing off, the schooner had no right
311 to approach or place herself to the schooner at any distance off

in such close proximity to the schooner that the error of a moment would bring destruction.

The decree entered with the clerk of the said circuit court for the eastern district of New York on the 20th day of June, 1877, was founded upon the aforesaid findings of fact and conclusions of law of said judge.

And inasmuch as the said several matters produced and given in evidence on the trial in said circuit court, and by the claimant's counsel objected and insisted on, and the said exceptions do not appear by the record of the decree of said judge, the said counsel for the claim-
312 ant has prepared and caused this bill of exceptions to be settled as a record thereof according to the form of the statute in such case made and provide', and the course and practice of the court, and to be signed and ordered on file by the judge.

WARD HUNT,
Asso. Just. Sup. Court U. S.

(Endorsed:) Bill of exceptions. Filed September 3rd, 1877.

313 U. S. circuit court, eastern district of New York.

WILLIAM H. MOUNT AND OTHERS, LIBELLANTS and appellees,
vs.
THE STEAMER BENEFACTOR, HER ENGINES, &c., The New York and Wilmington Steamship Company, claimants and appellants.

Take notice, that the New York and Wilmington Steamship Company, claimant herein, hereby appeal to the Supreme Court of the United States from the whole and every part of the final decree herein, bearing date the 13th day of June, 1877, and filed with the clerk of this court on the 20th day of June, 1877, in favor of the libellants and appellees.

Dated New York, June 21st, 1877.

Yours, &c.,

OWEN & GRAY,
Proctor' for App'lts.

To B. LINCOLN BENEDICT, Esqr.,
Clerk, &c.
Me'rs BEEBE, WILCOX & HOBBS,
Proctor for Mount et al.
Me'rs EVARTS, SOUTHMAYD, & CHOATE,
Proctors for co-libellants Insurance Company.

(Endorsed:) Notice of appeal. Filed June 22nd, 1877.

314 Supreme Court of the United States.

THE STEAMSHIP BENEFACTOR, HER ENGINES, etc., The New York and Wilmington Steamship Company, claimants and appellants,
ads.
WILLIAM H. MOUNT, ADAM PARTRIDGE, Gordon D. White, Arion B. Longstreet, Dennis You, Adam B. Johnson, Seneca Partridge, Justice Nelson, The Sun Mutual Insurance Company, and The Union Mutual Insurance Company, William Hirst, Charles Lukens, and John Collins, libellants and appellees.

To the honorable the Supreme Court of the United States:

The petition and appeal of the New York and Wilmington Steamboat Company, claimant above named, showeth:

That on or about the 4th day of March, 1875, the above-named
315 libellants, William H. Mount, Adam Partridge, Gordon D. White, Arion B. Longstreet, Dennis You, Adam B. Johnson, Seneca Partridge, and Justice Nelson, and the Sun Mutual Insurance Company, and the Union Mutual Insurance Company, filed their libel in the district court of the United States for the eastern district of New York against the Steamship Benefactor, her engines, tackle, apparel, &c., in a cause of collision, &c., and on the same day the above named libellants, William Hirst, Charles Luckens, and John Collins filed their libel against said steamship, &c., in said district court, in which said libels it is alleged and praying as therein contained, to which said libels these petitioners refer for their contents.

That thereafter and on the 6th day of April, in the year last
316 aforesaid, the claimant having filed its claim and executed the necessary stipulations for cost in each of said suits, and having executed a stipulation for value pursuant to an order of the court dated the 20th day of March, 1875, which said last mentioned stipulation was given for the benefit of the libellants in each of the said suits, and of all parties who might have sustained damages by reason of the collision in the libels mentioned, as by reference to said order will more fully appear, and to which reference is had for its contents, did file its answers to each of said libels alleging as therein contained, and insisting that said steamship Benefactor was not liable for the damages claimed by the libellants, and praying that the said district court would
317 pronounce against said libels and condemn the libellants in costs, and as will more fully appear on reference to said answers, and to which for the contents thereof this appellant asks leave to refer.

That thereafter said cause came on to be heard before the honorable Charles L. Benedict, judge of the said district court, on the 18th day of March and 21st day of April, 1876, upon the allegations and proofs adduced by the respective parties, and said judge having advised thereon, on or about the 4th day of May, in the year last aforesaid, made a decretal order or sentence bearing date that day that the libellants in each of said suits recover in said actions against the steamship Benefactor, her tackle, &c., the damages by them sustained by reason
318 of the collision in the pleadings mentioned, and with costs, to be taxed, and that it be referred to a commissioner of said court to ascertain and compute the amount of such damages and to report thereon to said court, as by reference to said decretal order will more fully appear; that after proceeding with such reference before B. Lincoln Benedict, esq., one of the said commissioners, he made his report to said court bearing date the 30th day of August, 1876.

That thereafter and on the 21st day of October, 1876, an order was made and entered in said causes, consolidating the said causes into one cause, as by reference to said order will more fully and at large appear.

That thereafter, and on the 20th day of October, 1876, a final
319 decree was made, bearing date that day, for the recovery by the libellant William H. Mount of the sum of one thousand four hundred and twelve dollars and fifty-one cents; for the recovery by the libellants William H. Mount, Adam Partridge, Gordon D. White, Arion B. Longstreet, Dennis You, Adam B. Johnson, Seneca Partridge, and Justice Nelson of the sum of twenty-two thousand two hundred and seventy-nine dollars and sixteen cents damages and costs; and for the

recovery by the co-libellants, the Sun Mutual Insurance Company and the Union Mutual Insurance Company, of the sum of thirty-eight thousand six hundred and two dollars and ninety-three cents, damages and costs; and for the recovery by the libellant William Hirst of the
320 sum of two hundred and sixty-eight dollars and twenty-three cents; and for the recovery by the libellant Charles Lukens of the sum of one hundred and eighty-one dollars and thirty-eight cents; and for the recovery by the libellant John Collins of the sum of two hundred dollars and twenty-three cents; and for the recovery by the libellants William Hirst, Charles Lukens, and John Collins of the sum of eighty-nine dollars, the amount of their costs against said steamship Benefactor, her engines, tackle, and furniture; as will more fully appear by reference to said decree, to which said reference is had for its contents.

That after such final decree your petitioners duly appealed therefrom to the circuit court of the United States for the eastern dis-
321 trict of New York, and the said cause was thereby removed to the said circuit court.

That thereafter your petitioner having filed in said circuit court new answers to the said libels, such proceedings were had in said circuit court that afterwards, on the 13th day of June, 1877, the said circuit court made a final decree in said cause, which said final decree was duly filed in the clerk's office of the said circuit court on the 20th day of June, 1877, whereby it was decreed that the said decree of the district court be in all respects affirmed, and that the libellant William H. Mount recover herein the sum of fourteen hundred and twelve dollars and fifty-one cents, with interest thereon from the date of said decree,
322 amounting together to the sum of fourteen hundred and seventy-six dollars and forty-two cents.

That the libellants William H. Mount, Adam Partridge, Gordon D. White, Arion B. Longstreet, Dennis You, Adam B. Johnson, Seneca Partridge, and Justice Nelson recover herein the sum of twenty-two thousand two hundred and seventy-nine dollars and sixteen cents, with interest thereon from the date of said decree, amounting altogether to the sum of twenty-three thousand two hundred and seventy-seven dollars and seventeen cents.

That the co-libellants the Sun Mutual Insurance Company and the Union Mutual Insurance Company recover herein the sum of
323 thirty-eight thousand six hundred and two dollars and ninety-three cents, with interest thereon from the date of the decree, amounting together to the sum of forty thousand three hundred and forty-nine dollars and forty-six cents, and also the further sum of seventy-eight dollars and twenty-five cents, the costs of said co-libellants herein as taxed, amounting altogether to the sum of forty thousand four hundred and twenty-seven dollars and seventy-one cents.

That the said William Hirst recover herein the sum of two hundred and sixty-eight dollars and twenty-three cents, with interest thereon from the date of the said decree, amounting altogether to the sum of two hundred and eighty dollars and thirty-six cents.

324 That the said co-libellants Charles Lukens recover herein the sum of one hundred and eighty-one dollars and thirty-eight cents, with interest thereon from the date of the said decree, amounting together to the sum of one hundred and eighty-nine dollars and fifty-nine cents.

That the said John Collins recover herein the sum of two hundred dollars and twenty-three cents, with interest thereon down to the date of

the said decree, amounting to the sum of two hundred and nine dollars and twenty-nine cents.

That the said libellants William Hirst, Charles Lukens, and John Collins recover herein the sum of eighty-nine dollars, their costs in the district court, with interest thereon from the date of said decree,
325 amounting together to the sum of ninety three dollars and two cents.

And that the said libellants William H. Mount, Adam Partridge, Gordon D. White, Arion B. Longstreet, Dennis You, Adam B. Johnson, Seneca Partridge, Justice Nelson, William Hirst, Charles Lukens, and John Collins recover herein the sum of one hundred and thirty-three dollars and seventy-five cents, the amount of their costs in the said circuit court. And that the libellants and appellees recover herein against said steamship and against the stipulators the sum of forty-seven thousand one hundred and sixty-two dollars and fifteen cents for damages, and the further sum of five hundred dollars for costs, as by refer-
326 ence to said final decree will more fully and at large appear, and to which reference is had for its contents.

And this appellant is advised and insists that said decree is erroneous inasmuch as said libel should have been dismissed with costs, and for that if the libellants were entitled to a decree for any damages, damages have been allowed which should not have been allowed.

Wherefore this appellant appeals from said decree of said circuit court and from the whole and every part thereof to the Supreme Court of the United States, and respectfully prays that the said decree of the said circuit court and the libels and answers, depositions, evidence, and pro-
ceedings in the said cause may be sent to the Supreme Court of
327 the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court may be reversed, and a decree made dismissing said libels with costs or such other decree made as to the said Supreme Court shall seem just.

And your petitioner will ever pray, &c.

Dated Brooklyn, July 5th. 1877.

OWEN & GRAY,
Proctors for Cl'm'ts and Appl'ts.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James C. Ally, being duly sworn, deposes and says that he is fourteen years of age and upwards, and is a clerk in the office of Owen & Gray, esquires, the proctors for the petitioners in the within petition
328 named; that on the fifth day of July, A. D. 1877, he served a copy of the within petition on Evarts, Southmayd & Choate, esquires, at their office No. 52 Wall st., New York City, by leaving a copy thereof with the person in charge of said office, neither member of the said firm being present at the time, between the hours of 1 and 2 p. m. of said day.

And deponent further says that on the day & year aforesaid he also served the within petition on Messrs. Beebe, Wilcox and Hobbs, at their office at No. 68 Wall street, in the city aforesaid, by leaving a copy thereof with the person in charge of said office, neither member of the firm being present at the time, between the hours of 1 and 2 p. m. of said day.

JAMES C. ALLEY.

Subscribed & sworn to before me July 5th, 1877.
[L. S.] S. G. LEATHEM,
Notary Public New York Co.

(Endorsed:) Petition of appeal. Filed July 6th, 1877.

329 *Bond for costs.*

Circuit court of the United States of America for the eastern district of New York, in the second circuit.

THE STEAMSHIP BENEFACTOR, HER ENGINES, &c., The New York and Wilmington Steamship Company, claimant and appellant,
vs.
WILLIAM H. MOUNT AND OTHERS, LIBELLANTS and appellees.

Know all men by these presents, that we, The New York and Wilmington Steamship Company, Thomas Clyde, William P. Clyde, Andrew Boardman, and Fred. Butterfield, are held and firmly bound unto the above named William H. Mount & others in the sum of sixty thousand dollars, to be paid to the said libellants and appellees, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. sealed with our seals and dated the twenty-ninth day of June, in the year of our Lord one thousand eight hundred and seventy-seven.

Whereas the above named The New York & Wilmington Steamship Company has prosecuted an appeal to the Supreme Court of the United States at the city of Washington, to reverse the decree rendered in the above entitled suit by the judge of the circuit court of the United States for the eastern district of New York:

Now, therefore, the condition of this obligation is such that if the above named appellant shall prosecute its appeal to effect and answer all damages and costs if it fail to make such appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THOS. CLYDE. [L. S.]
ANDREW BOARDMAN. [L. S.]
FRED'K BUTTERFIELD. [L. S.]
WM. P. CLYDE. [L. S.]

Sealed and delivered and taken and acknowledged this 29th day of June, 1877, before me.
[L. S.] E. C. BOARDMAN,
Notary Public, City & County of New York.

Taken & acknowledged by Thos. Clyde this 5th July, 1877.
CHARLES S. HILL,
Notary Public, City & County of N. Y.

330 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Thomas Clyde, William P. Clyde, Andrew Boardman, and Fred. Butterfield, being duly sworn, depose and say and each for himself says

that he is worth the sum of one hundred thousand dollars over and above his just debts and liabilities.

THOS. CLYDE.
ANDREW BOARDMAN.
FRED'K BUTTERFIELD.
WM. P. CLYDE.

Sworn to this 29th day of June, A. D. 1877, before me.
[L. S.] E. C. BOARDMAN,
Notary Public, City & County of New York.

Sworn to & subscribed by Thos. Clyde before me this 5th day of July, 1877.
[L. S.] CHARLES S. HILL (2*d*),
Notary Public, City & County of N. Y.

(Indorsed:) Vol. , page . U. S. circuit court. The Steamship Benefactor, her engine, &c., cl'm't & appellant, vs. William H. Mount & o'rs, lib'ts & appellees. Bond for costs on appeal. Owen & Gray, cl'm'ts & app'l'ts' proctor.

Approved July 5th, 1877.

C. L. BENEDICT.

Filed this 5th day of July, 1877.

331 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, B. Lincoln Benedict, clerk of the circuit court of the United States of America for the eastern district of New York, in the second circuit, do hereby certify that the foregoing pages numbered from one to three hundred and thirty-one, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of William H. Mount and others, libellants and appellees, vs. The Steamship Benefactor, her engines, &c., claimants and appellants, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of Brooklyn in the eastern district of New York, in the second circuit, this 22nd day of September, A. D. 1877, and of the Independence of the said United States the 102nd.

[SEAL.] B. LINCOLN BENEDICT,
Clerk.

332 By the honorable Charles L. Benedict, one of the judges of the circuit court of the United States for the eastern district of New York, in the second circuit.

To William H. Mount, Adam Partridge, Gordon D. White, Arion B. Longstreet, Dennis You, Adam B. Jackson, Seneca Partridge, Justus Nelson, The Sun Mutual Insurance Company, and The Union Mutual Insurance Company, William Hirst, Charles Lukens, Hugh McAdam, John Collins:

Whereas The Steamship Benefactor, her engine, &c., The New York & Wilmington Steamship Company, claimants, has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the eastern district of New York, in the second circuit, made in favor of said William H. Mount & others against the said Steamship Benefactor, her engine, &c., stating that the said decree is erroneous in its petition of appeal alleged, & praying that said cause may be heard anew and that the said decree

may be reversed; and the said New York and Wilmington Steamship Company having duly entered its said appeal to the Supreme Court of the United States and filed the security required by law,

You are therefore, hereby cited to appear before the said Supreme Court of the United States at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Brooklyn in the eastern district of New York, in the second circuit, the 5th day of July, in the
333 year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and first.

CHAS. L. BENEDICT.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James C. Alley, being duly sworn, deposes and says that he is fourteen years of age and upwards, and is a clerk in the office of Owen & Gray, esquires, the proctors for the petitioners in the within citation named; that on the 5th day of July, 1877, he served the within citation on Messrs. Evarts, Southmayd & Choat at their office No. 52 Wall street, New York City, by leaving a copy thereof with the person in charge of said office, neither member of said firm being present at the time, and at the same time exhibiting this, the original citation, and showing the signature of Charles L. Benedict thereto to such person.

Deponent further says that on the day and year aforesaid he also served the within citation on Messrs. Beebe, Wilcox & Hobbs, the proctors for libellants in the within entitled matter, at their office No. 68 Wall street, in the city aforesaid, by leaving a copy thereof with the person in charge thereof, neither member of said firm being present at the time, at the same time exhibiting this, the original citation, and showing the signature of Charles L. Benedict thereto to such person.

JAMES C. ALLEY.

334 Subscribed and sworn to before me this fifth day of July, 1877.

[SEAL.] S. G. LEATHEM,
Notary Public New York Co.

(Indorsed:) U. S. Supreme Court. The Steamship Benefactor, her engine, &c., The New York and Wilmington Steamship Company, claimant & appellant vs. William H. Mount & others, appellees. Citation. Owen & Gray, proctors for cl't & appel., 71 Wall st.

Due service of a copy of the within admitted this 5th day of July, 1877.

Filed July 6th, 1877.

(Indorsement on cover:) No. 323. The Steamship Benefactor, her engine, &c., The New York & Wilmington Steamship Company, claimant, appellant, vs. William H. Mount & Adam Partridge et al. E. New York C. C. U. S. Filed 22nd October, 1877.

ADDITION TO RECORD No. 65.

1 Supreme Court of the United States, October term, 1880.

STEAMSHIP BENEFACTOR, &c., APP'T,
vs.
WM. H. MOUNT ET AL. } No. 65.

Stipulation of counsel correcting record.

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, B. Lincoln Benedict, clerk of the United States circuit court for the eastern district of New York, do hereby certify that I have examined a printed copy of the transcript of record from the circuit court of the United States for the eastern district of New York to the Supreme
2 Court of the United States in the suit of the "Steamship Benefactor, her engines, &c., the New York & Wilmington Steamship Company, claimant and appellant, against William H. Mount, Adam Partridge, et al.," No. 323, and filed Oct. 22nd, 1877, and have compared folio 289, on pages 151 and 152 of said printed transcript of record, with the original bill of exceptions on file in my office in the above-mentioned suit, and find that said printed transcript at said folio 289 should read as follows:

"2. The weather at and prior to the time of the collision was fine and clear, the wind about west-northwest and strong; the steamship was bound from New York to Wilmington, and the schooner from Matanzas to New York.

"3. The steamship was observed by those in charge of the schooner when six or seven miles distant therefrom and from twenty to thirty minutes before the collision. At that time the steamship bore a
3 point or two off the starboard bow of the schooner. The schooner was close hauled, sailing on a course about north by west at the rate of about eight miles an hour. The steamship was proceeding on a course about south-southwest, at the rate of about ten miles an hour, with her sails set and the wind free, making much leeway."

And I further certify that the foregoing quotation as written has been compared with the original bill of exceptions in the above-mentioned suit on file in this office and is a true extract therefrom.

In witness whereof I have hereunto set my hand and the seal of this court, at Brooklyn, in the State of New York, this fifteenth day of October, in the year of our Lord one thousand eight*een* hundred and eighty.

[SEAL.] B. LINCOLN BENEDICT, *Clerk.*

4 We consent that the record be amended to conform to the foregoing certificate. 15 Oct., 1880.

EVARTS, SOUTHMAYD & CHOATE,
Proctors for Colibellants.

BEEBE, WILCOX & HOBBS,
Libellant's Proctors.

OWEN & GRAY,
Proctors for Claimants.

(Indorsed:) Supreme Court U. S. 1880, October term. No. 65. Steamship Benefactor, &c., app'l't, vs. Wm. H. Mount et al. Stipulation of counsel correcting record. Filed 23d Oct'r, 1880.

EVENING POST PRINT, 208 B'way, N. Y.

OFFICE SUPREME COURT U. S.
FILED
OCT. 27 1880
JAMES H. McKENNEY, Clerk

U. S. Supreme Court.

THE STEAMSHIP "BENEFACTOR," her engine, &c., the New York and Wilmington Steamship Company,
Claimant and Appellant,

vs.

WILLIAM H. MOUNT, ADAM PARTridge, Gordon D. White, Arion B. Longstreet, Dennis You, Adam B. Johnson, Seneca B. Partridge, Justice Nelson, The Sun Mutual Insurance Company, The Union Mutual Insurance Company, William Hirst, Charles Luken, and John Collins,
Libellants and Appellees.

Brief and Points of Claimant of the "Benefactor," the Appellant.

FIRST.—STATEMENT OF THE CASE.

(1.) This is an appeal from a decree of the U. S. Circuit Court for the Eastern District of New York, affirming a decree of the District Court and adjudging the recovery of

damages, arising from a collision between the schooner *Susan Wright* and the steamship *Benefactor*, in favor of the above named libellants, in suits and proceedings *in rem* commenced in the District Court against the *Benefactor*, which were consolidated in the District Court before final decree in that court.

(2.) The time of the collision was a little after 10 o'clock in the forenoon of the 26th day of February, 1875, in broad daylight and clear weather. The *Benefactor*, a steam propeller furnished with sails—a mainsail, foresail and jib—built to carry freight, and employed in the coasting trade as a carrier of freight between New York and Wilmington, North Carolina, was on a voyage from the former to the latter place.

The *Susan Wright*, a large three-masted schooner, had left Matanzas, Cuba, with a valuable cargo of sugar, on or about 17th February, 1875, bound for New York, and had all her sails set except her topsails, which latter had been taken in about an hour before the collision.

The rate of speed of the *Benefactor* was about ten miles and the *Susan Wright* eight miles an hour.

The *Benefactor* bound down, before either vessel sighted the other, was steering a course by the compass S.S.W., with the wind strong from off the land about W.N.W., making a sailing course S. by W. about three miles out, and along and parallel with the New Jersey coast line below the headlands next below Sandy Hook, which (coast line) down to Barnegat Light House and Inlet trends north by east and south by west.

The *Susan Wright* took on board a Sandy Hook pilot when off Barnegat Light House, and at a distance out off the coast, at that time, of 12 or 14 miles (Mount, p. 33), and being bound for New York, her intermediate destination was off the headlands next below Sandy Hook, at a point northeast of the place and course of the *Benefactor* bound down.

Applying any measure of 14 miles by the scale at the foot of the Government coast survey chart, will show the distance

out of the schooner off Barnegat Light House at her point of departure on a wind not necessitating any deviation on to the land; and the distance inshore of the course of the *Benefactor* from any range from the point of departure of the schooner to off and around the headlands below Sandy Hook will be apparent.

The place of the collision was a long distance inshore of this range, and within three miles of the shore off Squan village.

(3.) There were two libels filed against the *Benefactor* March 4, 1875—one by William Hirst and others, for the recovery for loss of personal effects, and the other by William H. Mount and others, as owners of the schooner *Susan Wright* and as carriers for the loss of the schooner and cargo.

The Sun Mutual Insurance Company and the Union Mutual Insurance Company afterwards were allowed to intervene as owners of the cargo, and were made co-libellants with the owners of the schooner (pp. 19 to 21).

The case of the libellants is set forth in the 3d article of the libels as follows (on p. 3):

That on or about the 17th day of February, 1875, the said schooner, then under the command of your libellant, William H. Mount, was lying in the port of Matanzas, Cuba, and had received on board a cargo of 162 hogsheads and 200 boxes of sugar, to be safely transported in said vessel and delivered to the consignees or owners thereof at the port of New York; and that on said day, the said vessel laden as aforesaid, sailed from the port of Matanzas, bound to the port of New York, and had reached in safety on the 26th day of February, instant, at about 10 o'clock in the morning, the vicinity of Squan, on the coast of New Jersey; the weather being fair, the wind about west-northwest and baffling, and the said schooner close-hauled and heading about north to north-northwest, and in charge of a duly licensed pilot, when the said steamship *Benefactor* was observed by those on board the said schooner on the lee or *starboard bow of the said schooner*, distant *from two*

to three miles and *heading about south-southwest, and for the course of the said schooner* under full headway, and having sails set with the wind free; that the said course and direction of the said steamer was continued without change of direction or speed, and the vessels thereupon came in contact, the said *Benefactor*, under full headway, and with great force striking the starboard quarter of the said schooner with her stem (the said *Benefactor* being an iron vessel), and thereby cutting and tearing away the said starboard quarter of said schooner, and in consequence of which the said schooner sunk, and the crew, by climbing into the rigging, were barely able to escape with their lives to a pilot boat which came to their assistance.

North is but 6 points from W. N. W., and north-northwest but four points from W. N. W.

The statement in the libel that the schooner was close-hauled and heading about north-northwest with the wind W. N. W. (within 6 to 4 points of the wind), when the steamer was observed by those on board the schooner on the lee or starboard bow of the schooner, distant from two to three miles, and heading about S. S. W., and for the course of the schooner under full headway, and having sails set with the wind free, is a description and admission of the schooner's luffing or coming into the wind (close-hauled within 6 to 4 points of the wind is coming into the wind), so as to bring the steamer distant two to three miles and heading about S. S. W., in a bearing down on the course of the crossing schooner under full headway and having sails set.

And the fault imputed to the steamship, in this statement, is in not changing her course or speed so as to avoid the collision in the the imminency caused by the schooner's crossing the course of the steamer on a luff to windward.

(4.) The case of the *Benefactor* in the Circuit Court is stated in the eighth and ninth articles of the amended answers filed in that court on the appeal by its permission, pp. 110–112, as follows:

"*Eighth.*—In respect to the collision these respondents, upon information and belief, admit, and say, that a collision did

occur between the schooner *Susan Wright* and the steamship *Benefactor*, after ten o'clock in the morning of the 26th February, 1875, in the vicinity of what is commonly known as the Woodlands, on the coast of New Jersey, or off Squan Beach.

That the schooner was bound to the port of New York. The wind west-northwest and hauling to the northward, and blowing a strong breeze from off the land. That the *Benefactor* was a steam propeller, furnished with sails—a mainsail, foresail, and jib—built to carry freight, and employed in the coasting trade as a carrier of freight between New York and Wilmington, North Carolina. Her length was one hundred and seventy-five feet. She was flat-bottomed and drawing a light draft of water. Her average rate of speed when loaded was from seven and a half to eight miles an hour. Her highest rate of speed with steam and sails with plenty of wind was about ten and a half miles, and her usual route in passing off the coast off which the collision took place, and the one required by the exigencies of safe and convenient navigation with the wind strong from off the land, was three to four miles out, and no further out than that. She had left New York about six o'clock in the morning of said 26th day of February, bound for Wilmington, being in all respects seaworthy, tight, staunch, strong, well fitted, officered, manned and equipped, with a cargo consisting of general merchandise, bound on one of her regular trips to Wilmington, North Carolina.

That when approaching to pass off the place where the collision took place, she was on her usual and a proper course as to distance off and along the line of the coast with the wind off land bound down. The captain and mate were in the pilot house of the *Benefactor*, attending to her navigation, and there was another man at the wheel, and good lookout on the forecastle attending to his duties.

That the said steamship was steering south-southwest by the compass, making a sailing course south by west parallel to the line of the coast, and while so running down along the coast under steam and having all sails set, and having a competent lookout stationed forward and attending to his duties, the schooner was discovered approaching, bound up, being then three miles distant off the port bow of the steamer, bearing from one to two points on the port bow, the steamer at that

time running down along the coast on the weather or land side of the schooner, the latter making a sailing course outside, and parallel to the course of the steamer a little outranging north-northeast, or thereabout. That if the schooner had kept on the course she was then making, the steamship would have passed the schooner off to the windward a proper and safe distance, and at a distance off from three hundred to four hundred yards, or thereabouts.

That on the closer approach to pass off said schooner to windward, the schooner was observed to be bearing off to leeward, which might be from porting helm or neglect of her helm, and so notice to the master of the steamer, who was watching her, of negligent navigation on board the schooner, and thereupon the helm of the steamer was put to port, and her course or direction changed to south west-half-west, in towards the land, and on the relative courses on which the two vessels were then standing, the steamer would have passed off to windward at a safe and proper distance, and a distance off of four hundred to five hundred yards.

While the man at the wheel of the steamer was porting his helm, and before time enough to steady it, the schooner was observed changing her course from a course off her proper course, bound up to in toward the land, and from a course to to leeward of that of the steamer, on which the steamer would have passed her in entire and absolute safety to one across the bow of the steamer, in toward the land, and continuing in that course across the bow of the steamer.

That in the extremity caused by this change of course, and direction of the schooner to a course across the bows of the steamer from a course and direction to leeward, upon which the steamer would have passed clear of the schooner at a distance off unquestionably sufficient for entire and absolute safety to the schooner, the helm of the steamer was put a-starboard and the peak of her mainsail, by order of her captain, was lowered to come round to leeward as rapidly as possible to clear the schooner by passing under her stern, and then immediately before the collision the engine was stopped, but the steamer, in the extremity produced by this sudden change of the schooner to a course and direction across the bows of the steamer, was not able to escape the collision which followed after the helm of the steamer had been put to

starboard, and the steamer's course and direction was changed as far as possible to leeward to clear the schooner, then standing in towards the shore across the steamer's bows, by passing under her stern, and the steamer's engines had been stopped, that being all that the steamer could do, the stem of the steamer striking against the starboard quarter of the schooner near the corner aft, the schooner at that time standing across, heading directly on to the land, almost exactly west by north, her sails shaking in the wind.

That the schooner's steering and making from a course farther out to leeward, and to leeward of the course of the steamer, a course across the bows of the steamer in toward the land, head on, thereby causing the collision, was not caused by, nor justly attributable to, any previous close proximity of the steamer in passing off to windward of the schooner, but solely through the want of a proper lookout on board the schooner, as the steamer was approaching to pass off of, and the improper and negligent navigation of the schooner.

Ninth.—These respondents aver that no proper lookout was kept on the said schooner as the said steamer was approaching to pass off inside to windward of her, and that the collision aforesaid was caused by the negligent navigation of the schooner in standing across the bow of the steamer in toward the shore, from a course out and about north-northeast, on which the schooner was standing as the steamship was passing down to windward and crossing in such close proximity to the steamer that the steamer was not able, by any means in her power, to avoid the collision which followed upon or after the efforts of the steamer to clear the schooner by starboarding so as to bring the steamer round to leeward as rapidly as possible in the hope of clearing the schooner by passing under her stern.

That as the steamer was coming round on the starboard helm, to avoid the collision, the schooner, by porting her helm in co-operation of the movement of the steamer, might have avoided said collision, but she made no reasonable effort to do so; but, as these claimants are informed, put her helm a-starboard, thereby rendering the collision unavoidable by the steamer. And these respondents aver that the collision in question was not caused by any fault on the part of the steam-

ship, but solely through the negligent navigation and fault of the schooner."

Under the pleadings, the question on the proofs was whether or not the schooner's luffing across the steamer's course was from a relative course of the schooner, outside that of the steamer, on an approach of the two vessels to pass within two or three miles off, or on an approach to pass so near that precautions were necessary to avoid danger of a collision, in which, as the steamer was passing down inside, on her course along the coast S. S. W. the schooner would have passed (if she had not so luffed across) off to leeward, her port side to the steamer's port side, in entire safety.

In the testimony of the witnesses called for the libellants there is no evidence—not a word—of relative bearing or course of the schooner to the steamer on her course on any near approach before the schooner is found standing across the steamer's bows.

From 8 o'clock in the morning to the time of the collision it was the mate's watch on the schooner.

William H. Norwood was the mate, and he and Peter Burns, who was at the wheel, and Hugh McAdam, on forward, made up the watch. These men were on deck. The men in the other watch were down in the forecastle (p. 39).

The pilot, Charles McNamee, was on deck, and Mount, the captain, as he swears, walking backward and forward, and keeping a lookout (39).

Peter Burns, who was at the wheel, was not called as a witness.

Evidence was offered of efforts to subpœna him, and his threatening to shoot the man who attempted it.

Burns not being called, there is no evidence from the schooner of any sailing course by the compass from observation of it before him.

McAdam, who was on forward, was not called.

The pilot, McNamee, was not called as a witness in the District Court for the libellant, but his testimony was read by the claimant in the District Court, and read for libellant in the Circuit Court.

Norwood, the mate, was not called for libellant.

William H. Mount, the only witness he seems to have been willing to trust, swears to seeing the steamer, from time to time, as she was proceeding down along the coast on a course S. S. W., and that he did not see her change it until when the schooner was standing across, when she attempted to come out in the imminency of the collision.

He swears, on page 35, that when he first saw the steamer, she must have been some five or six miles away from him—may be *seven* miles—and that she bore on his starboard bow from one point to two, and that he continued to watch her course from that time on, and that he did not see her alter her course until he supposed the vessels were three to five lengths apart, then he see her slack her mainsail, and thinks she tried to keep off.

This it appears, from his testimony, was when the schooner was standing across on a luff, as described in the libel.

On page 36 he swears that at that time he should judge his vessel was heading about north by west, or perhaps half a point either way from it. "I can't tell, because I was not by the compass to notice, nor didn't notice it, only by judging from the land. Before that the steamer seemed to be running parallel with the coast about south-southwest—southwest ½ west, may be."

Intermediate his first seeing the steamer at a distance off of six or seven miles, when she bore on his starboard bow perhaps a point or a point and a half, from one point to two, say, and his being three to five lengths off, as he was standing across, during which he was sailing on a wind hauling to the northward up to the time of the collision, and then hauling to the northward (fol. 66), he swears (on p. 40) while the steamer was running down the coast about southwest, the schooner's course varied form north to north by west, and north-northwest, north by west, and sometimes northwest he supposes; *i. e.*, not on any one course, sometimes north sometimes north by west, &c.

In all this testimony of Mount, there is not a word in respect to the relative bearing and course of the schooner to the steamer on any near approach before the schooner was standing across.

Knowing that it was charged that the schooner was off to leeward of the steamer, and on a course on which the steamer

going down inside would have passed port side to port side at a safe distance, but for change from this course by the schooner to inshore across steamer's course, thereby producing the emergency to which the collision was attributable, he certainly would have denied it if he could. He does not deny it.

McNamee, the pilot (p. 83, fol. 151), swears that when he first saw the steamer, she was away, he thinks, about six or seven miles, and that she bore about three points on his starboard bow (he does not say how the schooner was heading at the time).

His next observing the steamer when within a quarter of a mile of us by looking under the boom shows the schooner then standing across, but it shows nothing as to previous relative course or bearing of the schooner before standing across, which as shown by Mount had not been on one steady course from first seeing the steamer seven miles off.

There is a conflict between this witness and Mount as to what was done on the schooner as the schooner was standing across.

He swears (fols. 152 to 154) that as he saw that the schooner was standing across, he told the man at the wheel to put his wheel hard aport, and he went and helped him put it aport; that the captain came and took the wheel from him, and must have put it to starboard, because the schooner came right up head to the wind with her sails all shaking, &c.

Mount denies this at that juncture (in fol. 69 on p. 36). He swears that in that closeness he started aft to the wheel, and as he got there the pilot stepped away from it and he got to it and tried to put it aport, but don't think that he moved it more than two spokes for we was right in the act of collision.

The importance attached by the claimant to the testimony of the pilot to the interference with him by the captain as the schooner was luffing across was from a miapprehension of the evidence and mistake which may have mislead the District Judge.

William H. Norwood was the mate of the schooner. He was called by the claimant.

His testimony shows that his attention was called to relative bearing and course of schooner and steamboat as steamer was about passing down inside before the schooner was luffing across.

On page 69: I reside at 160 Washington street; I am a seafaring man; have followed the sea for thirty-two years; I know the schooner *Susan Wright;* I joined her on the 19th of January, 1875, at Galveston, as mate, bound on a voyage from thence to Matanzas, and to a port north of Hatteras, in the United States; I was on board of her at the time of the collision with the *Benefactor* as mate * * I was forward in the saloon, arranging the starboard chains before the collision; Hugh McAdam, seaman, was with me; he was helping me; there was no other person forward.

Q. When did you first notice the steamer, and where was the schooner?

A. The schooner was off Squan Beach, three or four miles off shore; I was forward at the time, engaged in ranging the chains; on our lee bow, that is on our starboard bow, nearly ahead, our schooner was heading at the time about north or north by west; I could not be positive, for I was not aft to see the compass; the wind was about west-northwest; our schooner had her four lower sails set; we had taken a pilot * * when I first saw the steamer, Peter Burns had the wheel of the schooner.

The steamer was from me, when I first saw her, a mile, I should judge, or more.

After I first saw the steamer, and before the collision, our helm was put up, and our vessel kept off rapidly; by being put up, I mean put to port.

After that, and before the collision, our helm was put down, causing the vessel to luff to the wind.

Upon the port helm above stated the schooner's head fell off about three points, which would bring her heading about north-northeast.

While the schooner was so heading, I noticed the steamer bearing about north or north half west from the schooner, on the port bow, about two points or two points and a half on the port bow.

The steamer was from the schooner, when the schooner ported her helm, from three-fourths to seven-eighths of a mile.

I knew that the helm had been put to port by the movement of the vessel, by seeing the vessel's bow paying off to eastward.

The schooner continued to run on the port helm before I noticed the second change, before stated, from two or three minutes.

I knew the schooner made the second change above referred to by seeing the vessel's bow swing to the wind, causing the head sails to shake.

After the second change, the steamer bore from the schooner about north by west, I should judge, which would be about a point on our starboard, at the time our head sails were shaking.

Was standing forward when I noticed these two changes in the schooner's course.

The steamer struck our vessel on her starboard quarter, about ten feet abaft the mizzen rigging, a blow angling aft.

Q. When did you first suppose there was danger of a collision between those two vessels?

A. When I saw the schooner's course change, hauling her head to the westward and across the steamer's bow; I then called Hugh McAdam from underneath the forecastle, and told him there was danger of a collision.

If the schooner had continued on her port helm, or had not luffed, the steamer would have passed us on our port side, and at a distance off of about two hundred or two hundred and fifty yards; she would have passed all clear of us.

Clark Newman, a friend of Mount's, on the shore south of Shark River (p. 26), saw a collision between a steamer and a schooner, on 26th February, 1875; the schooner was looking very nearly to me, so I could see it was a three-masted schooner, heading towards me, within a quarter of a mile of Shark's River; she was a little to the north of looking at me; she was about sailing a tack, as we call it, off to Shark's River; she had been ranging so as to make north-northeast.

4. The testimony of Norwood, the mate of the schooner, Paul Watts, the mate of the steamer (p. 96), and Nel. Nelson, the man at the wheel of the steamer (pp. 61 to 67), concurrent with the admission in the libel that the schooner was luffing across, so as to bring the steamer in a bearing on the starboard bow of the schooner, at a distance off of about two miles, so far as that admission goes, is uncontradicted and undisputed evidence as to the fact that the steamer was going down inside, and the two vessels were passing port side to port side, at a safe distance off, on a near approach of the two vessels to pass within two to three miles, when the schooner's course was changed across, on a luff, inshore, thereby producing the imminency to which the collision is to be attributed, and that there was done what could be done on the steamer as soon as there was any apparent necessity for further precautions than ordinary.

The references in the opinion (fol. 295) to testimony of Mount, as in denial of any change, except in the moment of peril, is a mistake.

The passage in the testimony of Mount referred to is a denial (in fol. 69, on p. 36) of a change when the two vessels were within five or six lengths right in the act of collision.

It was a denial of the testimony of the pilot McNamee (fols. 152 to 154) that, as he (McNamee) saw that the schooner was standing across, he told the man at the wheel to put his wheel hard aport, and he went and helped him put it aport; that the captain came and took the wheel from him, and must have put it to starboard, because the schooner came right up head to the wind with her sails all shaking, &c.

There is no denial in the testimony of Mount to the change, as testified to by Norwood, from a course on which the two vessels would have passed off port side to port side at a safe distance.

And there is nothing in the testimony of Mount to the purport that there was no change except in the moment of peril. The judge has made a mistake.

The statement in the first paragraph of this article is believed to be entirely correct.

5. Mount swears (fol. 66) that the wind by which he was sailing was hauling to the northward up to the time of the collision, and then it was hauling to the northward, at the time of the collision.

And the finding of the judge that the schooner, bound up, from the time of observation of the steamship by the schooner, when six or seven miles distant, and from twenty to thirty minutes before the collision, at which time the steamship bore a point or two off the starboard bow of the schooner, was close-hauled, and sailing on a course about north by west, as the steamship was proceeding on a course about south-south-west, on a course crossing that of the steamer, so as to involve risk of collision if continued, and that the schooner was held up on that course from seven miles off until in close proximity to the steamship, and the collision was imminent, is contrary to the admission in the statement of the case in the libel, and not pertinent to the issue, and is unsupported by any evidence and contrary to the undisputed evidence.

If pertinent to the issue and supported by the evidence, it would not be, under the circumstances of the approach, a ground for acquitting the schooner or charging the steamer with the consequences of the collision.

The findings present the case of a collision caused by the schooner bound up making a course before she was seen by the steamer, at a distance of seven miles off across the course of the steamer, so as to involve risk of collision, and holding the schooner up on that course, without notice to the steamer, off from any course of which the pilot of the steamer had notice, as of a vessel bound up, for seven miles, until the collision was imminent and unavoidable, all the while seeing that the steamer had no notice of any intention on the part of the schooner to approach her in dangerous proximity or to cross her bows.

6. The appeal brings up a bill of exceptions settled and signed by the judge, prepared according to New York State practice in courts of record of that State in actions at law, when the trial is before the judge or court as authorized by act of Congress.

The Act of Congress, February 16, 1875 (18 U. S. Statutes, p. 315), provides that the Circuit Courts of the United States, in deciding causes of admiralty and maritime jurisdiction on the instance side of the court, shall find the facts and the conclusions of law upon which it renders its judgments or decrees, and shall state the facts and conclusions of law separately.

* * * * * *

The review of judgments and decrees entered upon such findings by the Supreme Court, upon appeal, shall be limited to the determination of the questions of law arising upon the record, and to such rulings of the Circuit Court excepted to at the time as may be presented by a bill of exceptions prepared as in actions at law.

The requirement of the act of Congress that, in the cases mentioned, the court shall find the facts and the conclusions of law upon which it renders its judgments or decrees, and shall state the facts and conclusions of law separately, correspond to the requirement of the law of the State of New York in the trial, in courts of record, of cases before a judge without a jury.

3 Waite's Practice, 216.
Voorhees' Code of 1870, secs. 267, 268.
Van Slyck *v.* Hyatt, 46 N. Y., 259.

Under the act of Congress the review by the Supreme Court, upon appeal from judgments entered upon such findings, extends to the determination of the questions of law arising upon the record and to such rulings of the Circuit Court excepted to at the time as may be presented by a bill of exceptions prepared as in actions at law.

The rulings of the Circuit Court, which are subject to review on appeal to the Supreme Court, if excepted to, are not limited to rulings in the progress of the trial, but extend as well to the conclusions of law as found by the circuit judge, and to questions of law involved in his determination of the case, which may be presented by such a bill of exceptions.

The New York Court of Appeals has no jurisdiction to review questions of fact, but questions of law only, in cases

where the trial is by a judge or referee and the judgment appealed from is upon a finding of facts and conclusions of law.

Dunham *v.* Watkins, 12 N. Y., 556, 560.
Griscom *v.* The Mayor, 12 N. Y., 586.
Haight *v.* Williams, 46 N. Y., 683.

A finding as of fact what is without any evidence to support it, is an error of law upon exception taken.

Not finding facts as requested if the state of the evidence or such as to require it, is also error at law if the facts are material.

Beck *v.* Sheldon, 48 N. Y., 369, and cases cited.
Draper *v.* Stouvenal, 38 N. Y., 219, (holding that whenever a question of fact is found by a judge or Referee contrary to what the undisputed evidence requires, a legal error is committed).
Austin *v.* The New Jersey Steamboat Co., 43 N. Y., 75.
Sheldon *v.* Sheldon, 51 N. Y., 354.
Fellows *v.* Northrop, 39 N. Y., 117.

The bill of exception prepared according to the State practice in actions at law was authorized by sec. 914, U. S. R. S.

For State practice, *vide*

Hunt. *v.* Bloomer, 3 Kern., 341.
Weed *v.* The N. Y. & Harlem R. R. Co., 29, N. Y. (2 Tiff.), 616.
The Mayor *v.* Erben, 10 Bos., 189.
Johnson *v.* Whitlock, 12 How. Pr. R., 571.

In the State practice exceptions and rulings made on the trial should be made during its progress. Rulings made or involved in the determination of the cause were required to be made within ten days after notice of the judgment.

Under the Act of February 16th, rulings made on the trial should be made during its progress. Exceptions to rulings made or involved in the final determination of the case should be held in time on notice of them, or within ten days

after the entry of the decision or judgment, it not being operative as a decision or a decree before that.

See sec. 1007, U. S. R. S., as amended by Act. Feby. 18, 1875, 18 U. S. Statutes, 318.
U. S. Circuit Court Rule, 134.
See form of Decree.

The decisions on the Act of March 3d, 1865, sect. 5, Norris *v.* Jackson, 9 Wall., 125; Copelin *v.* Ins. Co., 9 Wall., 461, and others are irrelevant, the provisions of the act being different.

See the act, 13 U. S. Statutes, 501; U. S. R. S., sec. 649–700.

SECOND.—ASSIGNMENT OF ERRORS.

First Assignment of Error.

The findings of fact proposed by the claimant, and which the judge was requested to find as set forth in the bill of exceptions (fols. 285 to 287), standing upon the admission in the statement of the case in the libel to the effect that the schooner was luffing across, thereby bringing the steamer on a bearing on the starboard bow of the schooner at a distance off of about two miles, and in other respects on undisputed evidence, the judge should have found.

His not doing so is error of law under the exception (fols. 296 to 299).

The foregoing statement of the case in that behalf is referred to for the evidence.

Second Assignment of Error.

The next error assigned as error of law is the finding of the facts as stated in the sixth exception, as not only against the evidence according to its fair and reasonable import, but as being without any evidence to support it, as follows:

First exception (fol. 303), the claimant excepts to the finding of facts as found by the judge so far as the same purport that the schooner was not on a relative course to that of the steamship when the two vessels were at a distance off and apart of two to three miles—that the steamship would have passed to windward of the schooner at a distance so far off port side to port side, as to be beyond reach or risk of collision, and that from thenceforth the steamship was not on a course to pass off the schooner to windward of her, port side to port side, at a distance so far off as to be beyond reach and risk of a collision, until a change of course of the schooner on a nearer approach of the two vessels to pass from a course to pass off to leeward of the steamship to a course across the bows of the steamer, upon which the schooner going across as aforesaid stood on a course in such close proximity to the steamer's course as to put it out of the power of the steamer by the execution of such precautionary measures as were resorted to by her, by starboarding and stopping, or by any other precautionary measures in her power in the extremity produced by the aforesaid change of course of the schooner to avoid said collision.

(See foregoing statement.)

This exception brings into view a passage in the opinion (fol. 265), in which the judge supposes that the steamer might be responsible for the collision if making a course to pass off the schooner port side to port side, a cable's length, that is, 720 feet under the circumstances of fine clear weather, with plenty of wind to give the schooner control of her movements by reason of the terrorism of a steamer to the schooner so close as 720 feet.

This supposed terrorism and the clear mistake in the following passage of the opinion in supposing that Mount

contradicts the statement of Norwood, the mate, and look-out on the schooner to the luff of the schooner passing port side to port side, and before the collision, which after this luff was impending.

Third Assignment of Error.

This claimant assigns as error in law the findings of fact excepted to as being without any evidence to support it in the seventh exception (fol. 304), to wit: the findings of fact to the third division of the findings of fact—that the schooner at the time therein referred to close-hauled was sailing on a course about north by west; and also to the fourth finding in said division, that the steamer on any approach to pass off said schooner was making much or any leeway.

There is no evidence that the schooner close-hauled at the time referred to was sailing on a course about north by west, nor on what course by the compass.

The only evidence in respect to leeway of the steamer is that she was held up one point to prevent leeway.

Fourth Assignment of Error.

The claimant assigns as error in law the findings of fact excepted to in the eighth exception as unsupported by any evidence (fol. 305), to wit, to the finding in the fourth division of the findings of the judge—that, at the time referred to therein, the courses of the two vessels were such as to cross each other if continued, and such as to bring the two vessels either together or into close proximity to each other, and that the two vessels were proceeding in such directions as to involve risk of collision. The time referred to is when the schooner was seven miles off.

A direction in which a sailing vessel may be standing seven miles off, out of range or unseen by another, or if seen, known to be bound for a destination above the place and course of the other, is not as to such other a course in the sense supposed.

Fifth Assignment of Error.

The claimant assigns as error in law the findings as of fact excepted to in the ninth exception as unsupported by any evidence (fol. 306), to wit, to the findings in the fifth division of the findings of fact, in its purport that on any approach so near as to make precaution necessary to avoid collision under the circumstances of broad daylight; that there were no obstructions in the course of the schooner, with the wind hauling to northward, or other obstructions to prevent the steamship from changing her course so as to pass to leeward of the schooner, or that there was either error or fault in the steamship proceeding as she did.

The schooner itself, sailing on a wind hauling to northward, was an obstruction. The schooner bound for a destination higher up to northeast of place and course of the schooner might be expected to turn up at any moment.

There were many other vessels off to leeward (fol. 117).

Sixth Assignment of Error.

The claimant assigns as error in law the findings of fact excepted to in the tenth exception as being without evidence to support them (fol. 307), to wit, to the findings in the sixth division of the findings of fact, in its purport that a proper lookout as to the course of the steamer was kept on the

schooner; and also so far as it purports that any lookout whatever was kept on the schooner of the relative courses of the two vessels as they were about approaching; and also to the finding that as the two vessels were approaching from the time referred to, that the schooner was kept close-hauled upon her course, and to each of said findings.

Mount, as he swears, was looking at the steamer, and when the schooner, according to the findings of the judge, was following up the steamer and kept on a course across, from seven miles off, he had the steamer in plain sight, and saw by her not changing that she had no notice that the schooner was making for her or intending to run into her, from seven miles off.

But he paid no attention to relative course of schooner to steamer, and acted on the assumption that it was not his business.

W. H. Norwood, the mate, and McAdam were forward as lookouts, but engaged in arranging chains.

Norwood appears to have been the only man on the schooner whose attention was given to relative bearings and course of the schooner to steamer as the schooner was about passing port to port, before schooner was luffed across, as sworn to by him in his deposition.

That the schooner was kept close-hauled upon her course, as supposed, is contrary to the undisputed evidence, and the effect of the statement in the libel above referred to.

The other findings under the tenth exception were through error.

Seventh Assignment of Error.

The claimant alleges as error in law the findings of fact excepted to in the twelfth exception (fol. 310), to wit, to the findings of fact in the eighth division of the findings, in its purport that the schooner kept her course from the time of first observation of the steamer until the steamship was in close prox-

imity, for its being against the evidence, and, separately, for its being without any evidence to support it.

She, upon undisputed evidence, sometimes went off and sometimes came to, and as in crossing was coming into the wind.

Eighth Assignment of Error.

The claimant in the bill of exceptions excepts to the decision of the judge. For that upon the case as presented on the pleadings and proofs in the Circuit Court, the said judge did not direct that the decree of the District Court be reversed, and the libel dismissed, with costs.

Exc., numbered Fifth, fol. 302.

The judge's not doing so is assigned as error, forasmuch as under these pleadings and upon the undisputed evidence, the collision was caused by the schooner's luffing across.

Ninth Assignment of Error.

The judge, on the trial, was requested by the claimant to hold and decide as conclusion of law, that as between the steamer and sailing vessel, the obligation of the former to keep clear of the latter, did not require a deviation by the steamer bound down along the coast, so far off from her usual course, or from one required by the exigencies of her safe and convenient navigation, as to render a collision impossible from a sudden or improper change of course or negligent navigation of the sailing vessel in passing.

Neither when the steamer was approaching to pass off to windward of the schooner's course, and keeping a good look-out, and exercising all needful precautions and circumspection from a distance, when such precautions and circumspection

became necessary, did it absolve the schooner from the co-relative duty to keep on her proper course reasonably, without unnecessarily interposing obstacles to the steamer's performing its duty.

See proposition, p. 151, Exc. Second, p. 155, fol. 299.

Charging the steamer not only as in fault for the collision, but as the sole party in fault, on the findings of fact by the judge, is in manifest disregard and refusal to act upon the principle of this request.

This is assigned as error.

Tenth Assignment of Error.

The claimant assigns as error the first conclusion of law upon the findings of fact, as follows :

1. Upon the steamship's and schooner's discovering each other proceeding in such directions to involve risk of collision, as *stated* in the foregoing findings of fact, it was the right and duty of the schooner to keep her course, and the duty of the steamship to keep out of the way of the schooner, and the steamship was in fault in failing to perform that duty.

Eleventh Assignment of Error.

On the facts as found by the judge, it was error to charge the steamship as the party in fault for the collision.

Twelfth Assignment of Error.

On the facts as found by the judge, if the steamship was chargeable with fault for the collision, it was error to charge her as the party solely in fault.

Thirteenth Assignment of Error.

On the admission in the statement of the case in the libel to the effect that the schooner was luffing across, thereby bringing the steamer on a bearing on the starboard bow of the schooner at a distance off of about two miles.

It was error to charge the steamship as the sole party in fault, notwithstanding anything found in the findings of fact.

POINTS OF ARGUMENT.

I.—The court is referred to the *Free State*, 1 Otto, 200; the *Sunnyside*, *id.*, 208, for the principles of law governing the case, and in support of the propositions of law in the ninth assignment of error.

II.—The cases in the District Court were disposed of in favor of libellants on one of the issues presented by the answer in the District Court on evidence which was material and pertinent on the question of fault of the the schooner upon that issue, to wit: for not clearing the steamer by porting her helm as the schooner was crossing on a luff; with little attention to, or consideration of, and without expressly determining anything respecting the question of fault in the

schooner on the other issue presented, charging fault on the schooner on crossing from a course outside, on which steamer and schooner would have passed port side to port side in safety, upon the testimony of the witnesses pertinent only to the latter issue.

The libel, as above stated, presented the case of a collision which was produced by, or followed the schooner's crossing hauled so close to the wind that with the wind W. N. W. she was heading from N. to N. W. by N., that is from six to four points of the wind, a description of the schooner as coming into the wind, or luffing, thereby bringing the steamer in a bearing as she was standing S. S. W., down on the schooner's starboard bow.

The answer of the claimants in the District Court presented two grounds of defense presenting different issues.

One, upon information, that as the schooner was crossing, the steamer being then about *half a mile* distant, and bearing a little on the schooner's starboard bow, that her pilot then ordered the schooner's wheel to be ported, so as to pass the steamship port to port, and he assisted the man at the wheel in putting the wheel to port. That by this movement the schooner's head fell off several points to eastward, thereby bringing the steamer on her port bow; and if she had kept that course, or steadied her wheel, she would have passed the steamer port to port, as her pilot had intended, at a proper and safe distance apart, without the least danger of a collision.

But instead of doing so, the master of the schooner, when somewhere within a quarter of a mile of the steamship, wrongfully and improperly took the navigation of the schooner out of the charge of this pilot, and, thrusting him aside, seized the wheel and instantly hove it hard a-starboard, and thereby brought the schooner's head to the wind, and athwart the steamship's course and under her bows. That the schooner came up so far to the wind before the collision that her sails shook, and that while in that position the steamship unavoid-

ably struck the schooner on her starboard quarter somewhere about ten feet from her mizzen chains, and sunk her.

The other ground of defense alleged in the answer (on p. 18) is, in short, the schooner was discovered aproaching, being then about two miles distant, and being from one to two points on the steamer's port bow; that there was at that time plenty of room for the steamship to have kept out of her way, and if the schooner had kept her course the steamship could and would have done so, and have passed at a proper distance with port to port in perfect safety; and then, it is alleged, that the schooner, from off this course on which the two vessels would have passed port to port in perfect safety, luffed up to the wind, and, before the collision, had come up so far that her sails shook, thus bringing her starboard side toward the steamship; that, as soon as it was discovered that the schooner was so luffiing, the wheel of the steamship was put hard-a-starboard as quickly as possible, the bells were rung to stop and back, the main sheet let go, and every effort made as quickly as possible which could have been made to avoid a collision, but it was impossible to keep away from, or to clear, the shooner, and the steamship struck her on her starboard side, about ten feet abaft the mizzen chains, and sunk her.

On the trial this scene took place.

On p. 60, Mr. Wilcox: We have now examined all our witnesses except the pilot. We are aware that our friends will expect us to produce him. We have subpœnaed him, and now produce him for them to examine him, if they desire.

We have concluded not to make him a witness of our own

Mr. Owen: Do you decline to produce him or examine him.

Mr. Wilcox: We won't call him, but he is here.

He was examined for the claimant by Mr. Owen to prove the allegation in the first ground of defense that after the schooner was luffing across she could have cleared the steamship by porting but for the interference of the schooner's captain.

McNamee swears (on page 83) that when he first saw the steamer she was about 6 or 7 miles away.

On pp. 84-85, that he next observed the steamer when she was within a quarter of a mile of us; me and the captain were

on deck, walking back and forward, and we stooped and looked under the boom, and saw the steamer was coming rather close, and told the man at the wheel to put the wheel hard aport, and went and helped him to put it aport; the captain he came and took the wheel out of my hands and put it a-starboard; me and the man Burns had hold of the wheel, holding it to port; he must have put it to starboard, because the schooner came right up, head to the wind, with her sails all shaking. * * *

After the captain had starboarded the wheel, and his vessel was shaking, the steamer starboarded her wheel, that paid him off to the eastward or southward; I think the steamer was off from me about four lengths at that time.

The schooner had lost her headway by luffing.

If both vessels had kept their courses and he after he ported and the steamship ported, they would have passed from each other abeam, when they began to pass abeam about 40 or 50 feet port to port.

He first apprehended danger of collision when the wheel was put to starboard and brought us up head to the wind.

Mount (on p. 35). He first saw the steamer in neighborhood of half an hour or a little less before the collision, six or seven miles away * * * I was watching her more or less all the time, and I didn't see her alter her course until, I suppose, the vessels were from 3 to 5 lengths apart, and then I see her slack her mainsails, and I see we were bound to have a collision, *and I ran aft*; I was forward about amidships of our vessel, near the centre of her, so I could see to leeward; I see her slack her mainsail, and I think she tried to keep off, but I did'nt notice enough to see whether she changed her course or not; if she did, it was very trifling.

On p. 36. I went by the wheel; as I got there the pilot stepped away from it, and I got to it and tried to put it aport, but I don't think that I moved it more than two spokes, for we was right in the act of collision, and the steamship was coming right direct at me, so that I had to leave it.

See further as to this on p, 41. I tried to get her to port, so the vessel would make a more glancing blow; I endeavored

to get the wheel up, but I did not move it more than two spokes before I had to leave it.

This testimony is referred to merely for the purpose of showing that what these witnesses are swearing about is a porting and starboarding after the schooner was crossing the steamer and almost in the act of collision, and not to any porting or starboarding on the schooner from a course outside to pass port side to port side, such as found in the testimony above referred to in the foregoing statement of the case as uncontradicted.

The opinion of the District Judge (pp. 109–110) shows that he disposed of the case in favor of the libellant, on the evidence of measures and closeness in this testimony of Mount and McNamee, which was only pertinent to the first issue in the answer in the District Court.

The claimant, by permission of the court, filed amended answers in the Circuit Court to conform to the evidence, and the trial in the Circuit Court being a new trial the case was tried there under the libels and answers in the Circuit Court.

In these answers it is alleged with greater definiteness that the collision was caused by a change of course of the schooner from outside to across the steamer's bows.

And there is a general averment that the collision in question was not caused by any fault on the part of the steamship, but solely through the negligent navigation and fault of the schooner.

The findings of fact in the record show the grounds of fact upon which the decree in the Circuit Court was made.

III.—If it shall appear to the court that the several exceptions referred to in the first, second, third, fourth, fifth, sixth, seventh and eighth assignments of error, or any of them, are well taken the judgment should be reversed.

IV.—Upon the facts in the findings of the judge, upon which the judgment or decree was made affirming the judgment of the District Court and adjudging the recovery of damages, the judgment of the District Court should have been reversed and the libels ordered dismissed.

According to the facts in the findings the schooner coming in from sea bound for New York, weather at and prior to the time of the collision fine and clear; wind about W. N.W., and strong, the steamship was observed by those in charge of the schooner when six or seven miles distant therefrom, and from twenty to thirty minutes before the collision, without being observed from the steamship, steamship bearing a point or two off the starboard bow of the schooner, the schooner close-hauled, sailing on a course about north by west at the rate of about eight miles an hour, the steamship proceeding on a course about S. S.W., at the rate of about ten miles an hour, with her sails set and the wind free, and making much leeway was at the time of this observation by the schooner of the steamship at the distance off of six or seven miles, the course of the two vessels were such as to cross each other if continued, and such as to bring the two vessels either together or into close proximity to each other, and the two vessels were proceeding in such direction as to involve risk of collision.

From the time when the steamship was observed as above stated, she was watched by those in charge of the schooner, and the schooner was kept close-hauled upon this course across the steamer, involving risk of collision, and seeing that the steamer did not change her course and was keeping upon her course without slacking speed or stopping until the vessels were only a few lengths apart, and a collision was imminent when the peak of her mainsail was lowered, her engines slowed and stopped and an effort made to pass to leeward of the schooner without success.

The schooner, all the time watching the course of the steamer, was held up to her course until the steamship was in close proximity and the collision was imminent, and if there was any change in the schooner's course after that, and before the collision actually took place it was very slight, had no effect in producing the collision, and was made in extremis.

It is not the case of a steamer and schooner sighting each other six or seven miles off, as might be the case of two vessels in fair weather on the wide sea. But it is the case of a steamer following along down the coast inside and a schooner coming in from sea bound to a destination higher up than the place and course of the steamer, and seeing the steamer at a distance off of six to seven miles, a point or two on her starboard bow, without the steamer seeing her, and making and being held up to a course for the steamer from six to seven miles off and across her bows, involving risk of collision if continued, and with notice from the steamer not changing, that she is not apprised of any intention to approach in dangerous proximity, or to cross her bows inshore on to the land, continuing this course until in the imminency of the collision.

On the foregoing findings of facts, the judge held that the schooner was exercising a right and performing a duty, and instead of holding the schooner responsible for thus recklessly throwing herself across the bows of the steamer, he charged the steamer with the consequences as the sole party in fault, although the schooner, at any moment in her passge, without possibility of hurt, might have avoided all risk of danger by turning a point or two toward her destination or dropping her helm.

V.—Off the coast down which the steamship was sailing, and further out than her course, is a great, thoroughfare of vessels converging towards the entrance of the harbor of New York.

Nel. Nelson, at the wheel, and who had been on the lookout on the steamship (fol. 117), says he did not report the schooner when he first saw her on the lookout, because the captain and mate were looking through the window, *and there were so many vessels besides.*

A pilot of a steamer, moving down along this coast, approaching off Squan Village, seeing a vessel bound for New York off six to seven miles, if he observed that she was close to the wind, on a wind W. N. W., coming in from sea as the

land lies, would be chargeable with notice that she was bound for a point higher up, and not that she was bound inshore into the land, unless beating up against a wind, now on one stretch close hauled, and now on the other, in which case a pilot seeing her would be chargeable with notice that she intended to run out her tack.

The mere fact that the schooner off the coast saw the steamer running down in a direction contrary to that to which she was bound, and that it was fair weather, and that at a distance off of six to seven miles when first seen, the steamer bore a point or two on her starboard bow, as the schooner was standing on first sighting the steamer, although sailing close to the wind, imposed no obligation on the schooner to continue a course from so far off until in dangerous proximity or across the steamer's bows, and was no notice to the steamer of an intention to do so.

The supposition that there is anything in the sailing rules (XX., XXIII., XXIV.) which required the schooner, under the circumstances of this case, from six to seven miles off, to continue on a course upon which she had to be held up, involving risk of collision for six to seven miles, has no foundation in any requirement of reasonable navigation.

And no such persistent following up of a steamer by a sailing vessel, as presented in the finding of facts, can be a ground of charging the casualty to the schooner on the steamer.

VI.—It is submitted that in the facts as to the navigation of the schooner the decree of the Circuit Court should be reversed and the libel dismissed.

VII.—The claimants submit the case upon the foregoing 10th, 11th, 12th and 13th assignments of error, without further argument.

C. Van Santvoord,
Of Counsel for Claimants and Appellants.

Supreme Court of the United States.

THE STEAMSHIP "BENEFACTOR," engines, &c., THE NEW YORK and WILMINGTON STEAMSHIP COMPANY,

Appellant,

vs.

WILLIAM H. MOUNT *et al.*,

Respondents.

Brief on behalf of The Sun Mutual Insurance Company and The Mutual Insurance Company, Co-Respondents.

Statement of Facts.

The facts in respect to the collision involved in this suit as found by the learned Justice, who tried the case in the Circuit Court, are as follows: (See Record, pp. 151, 152.)

Findings of Fact.

1. The collision between the steamship *Benefactor* and the schooner *Susan E. Wright*, in controversy in this suit, took place a little after ten

o'clock in the forenoon of the 26th day of February, 1875, off Squan Beach, New Jersey, and about three miles distance therefrom.

2. The weather at and prior to the time of the collision was fine and clear, the wind about west northwest and strong; the steamship was bound from New York to Wilmington, and the schooner from Matanzas to New York.

3. The steamship was observed by those in charge of the schooner when six or seven miles distant therefrom, and from twenty to thirty minutes before the collision. At that time the steamship bore a point or two off the starboard bow of the schooner. The schooner was close-hauled, sailing on a course about north by west, at the rate of about eight miles an hour. The steamship was proceeding on a course about south southwest at the rate of about ten miles an hour, with her sails set, and the wind free, and making much lee-way.

4. At this time the courses of the two vessels were such as to cross each other, if continued, and such as to bring the two vessels either together or into close proximity to each other, and the two vessels were proceeding in such directions as to involve risk of collision.

5. On the windward side of the two vessels, and about three miles distant therefrom, was the New Jersey shore, trending at that point about north by east and south by west, and on the leeward side was the open ocean, without any obstruction to safe navigation. There was nothing to prevent the steamship from seasonably changing her course so as to pass either to windward or to leeward of the schooner and give her a wide berth.

6. From the time when the steamship was observed, as above stated, she was watched by those in charge of the schooner, and the schooner was kept close hauled upon her course. The steamship was also kept upon her course, without slacking speed or stopping, until the vessels were only a few lengths apart and a collision was imminent, when the peak of her mainsail was lowered, her engines slowed and stopped, and an effort made to pass to leeward of the schooner, but without success.

7. After the steamship was within a few lengths of the schooner and a collision was imminent, the captain of the schooner attempted to avoid the impending collision, or lessen its force by porting the helm of the schooner, but after putting the schooner's wheel only about two spokes to port, he was driven away therefrom by the nearer and dangerous approach of the steamship which struck the schooner on her starboard quarter, in consequence of which the schooner sank almost immediately, with her valuable cargo.

8. The schooner kept her course until the steamship was in close proximity, and the collision was imminent, and if there was any change in the schooner's course after that, and before the collision actually took place, it was very slight, had no effect in producing the collision, and was made *in extremis*.

9. At the time of the collision the schooner was of the value of $17,850, the cargo was of the value of $35,046.58; and both the vessel and cargo, by reason of the collision, became a total loss. The amount of damage sustained by William H. Mount, by reason of loss of and injury to his personal

effects by the collision was $1,283.85. The net freight lost by reason of the collision was $1,923.14. The amount of damages sustained by William Hirst, Charles Lukens and John Collins, by reason of the loss of and injury to their personal effects, by reason of the collision, was $244, $165 and $182.15 respectively.

No other statement of these facts is necessary, or would seem to be appropriate.

The following are the Conclusions of Law of the Circuit Court upon the facts above stated: (See Record, pp. 152, 153.)

Conclusions of Law.

1. Upon the steamship and schooner discovering each other proceeding in such directions as to involve risk of collision, as stated in the foregoing findings of fact, it was the right and duty of the schooner to keep her course, and the duty of the steamship to keep out of the way of the schooner, and the steamship was in fault in failing to perform that duty.

2. It was also the duty of the steamship, under the circumstances stated, to pursue a course which should not needlessly put the schooner in imminent peril, and the steamship was in fault in failing to perform that duty.

3. It was the duty of the steamship, before the time when she did so, to slacken her speed or stop, and the steamship was in fault in failing to perform that duty.

4. If when a collision had become imminent, by reason of the fault of the steamship, any error was

committed *in extremis* by those in charge of the schooner, the schooner is not responsible therefor.

5. The steamship had no right, under the circumstances stated, needlessly to place herself in such close proximity to the schooner, that the error of a moment would bring destruction.

6. The collision was occasioned by the fault of the steamship, and the steamship should be condemned therefor.

7. The decree of the District Court was right, and should be affirmed with costs.

Two suits were originally commenced in the District Court, one on behalf of the master and owners of the schooner, the other on behalf of certain of the seamen. The value of the vessel was fixed by an appraisement in both suits at forty thousand dollars, and upon the execution and filing of a stipulation for that amount the vessel was discharged from custody.

Before the trial in the District Court The Sun Mutual Insurance Company and The Union Mutual Insurance Company were, on their own petition, and with the consent of the proctors for the libellants and claimants, admitted as co-libellants in the cause, and to share in the benefit of the stipulation (p. 19–21).

Before the entry of the final decree in the District Court the two original suits were upon motion of the claimants consolidated into one suit (p. 102).

The final decree in the District Court, which held the steamship alone in fault for the collision, was entered on the 21st day of October, 187[illegible], and is printed at pages 102–105.

The claimants appealed to the Circuit Court, and then asked and obtained leave to interpose new answers (see pp. 110 to 116), which will be found to differ quite materially from the answers originally interposed by the claimant in said suits.

The Circuit Court affirmed the decree of the District Court holding the steamer alone in fault, and made the findings of fact and conclusions of law above quoted.

The decree in the Circuit Court was entered on the 20th day of June, 1877, and thereupon the claimant appealed to this Court.

The counsel for the claimant after the entry of the decree in the Circuit Court, filed a Bill of Exceptions, which is printed at pages 148–158. The only exceptions which are stated therein are printed at pages 154–158, and are either exceptions to findings of fact or exceptions to the refusal of the Court to make the findings of fact or conclusions of law requested by the claimant, except the Fifth Exception, which is a general one, and the Thirteenth and Fourteenth Exceptions; the first of which latter is an exception to the Judge's conclusion of law, because founded upon a different view of the facts from that entertained by the claimant's counsel, and the second of which is an exception to the fifth conclusion of Law of the Circuit Court. This last is the only exception reviewable by this Court, and will be very briefly referred to again hereafter.

The opinions of the District and Circuit Courts will be found at pages 109–110 and 144–145.

POINTS.

First.—The exceptions to the findings of fact of the learned Justice who tried the case in the Circuit Court and the exceptions to his refusals to make the findings of fact and conclusions of law requested by the claimant's counsel are not reviewable in this Court.

The Abbottsford, VIII Otto, 440.

Certain of the exceptions contain the averment as to certain findings of fact that they are either without evidence to sustain them, or are against evidence. The averment is erroneous.

(*a.*) Of these, the sixth exception, the ninth, the tenth and eleventh, are not drawn with sufficient distinctness to enable the Court to ascertain what particular finding is excepted to on this ground. These exceptions should be disregarded.

(*b.*) As to the seventh exception, see the original answers, (pp. 31–36), and evidence of Mount, (p. 68), and Johnson, (p. 96), Jones (p. 238), and Reed (p. 254).

As to the eighth exception, see pp. 13 to 18 of this brief.

As to the tenth and twelfth exceptions, see pp. 19 to 32 of this brief.

Second.—The Thirteenth Exception to the conclusions of law because they are based upon an

assumed state of facts not warranted by the evidence in this case is, of course, merely another exception to the findings of fact and is not reviewable.

Third.—The Fourteenth Exception, which excepts for error in law to the fifth conclusion of law is the only one which is at all reviewable, and certainly cannot be sustained.

The conclusion of law excepted to is as follows: "The steamship had no right, under the circum- "stances stated, needlessly to place herself in such "close proximity to the schooner that the error of "a moment would bring destruction."

What are the circumstances stated? A fine, clear morning, the vessels discerning each other several miles apart, the vessels upon the open ocean and three miles from the shore, the schooner keeping her course close-hauled until the last moment, and as the Court finds, nothing to prevent the steamship from seasonably changing her course so as to pass either to windward or to leeward of the schooner, and give her a wide berth.

Can it be doubted, or denied, that under these circumstances "the steamship had no right need- "lessly to place herself in such close proximity to "the schooner that the error of a moment would bring destruction"?

The Court has always specially inculcated and required prompt precautionary measures to avoid needless risk of collision, and has scrutinized more

closely the preliminary movements made when vessels are first found to be on courses involving danger of collision, than the later movements made after collision has become more imminent or the vessels are *in extremis*.

The Genesee Chief, 12 How., 461.
The Fairbanks, 9 Wall., 420-425.

But even if for any reason exception could be taken to the fifth conclusion of law, it is merely a subsidiary proposition not at all necessary to the final determination of the case in our favor.

The question before this Court is whether, upon the findings of fact of the Circuit Court we are entitled to an affirmance of the decree of the District Court; even if one of the conclusions of law found by the Circuit Court should be in some respect inaccurate the Court would not disturb the judgment of the Circuit Court, if upon the facts found that judgment was the one proper to be made; and upon the findings of fact of the Circuit Court in this case it seems to be impossible that any doubt as to the liability of the steamer alone for the collision can be entertained.

The only questions in this case below were questions of fact, and these have been decided in our

favor by the District and Circuit Courts, and are not reviewable and will not be reviewed here.

Fourth.—The findings of fact of the Circuit Court were amply sustained by the evidence.

It certainly seems unnecessary to discuss this point after the decision of this Court in the case of *The Abbottsford*, *supra*, but we will reprint the brief upon the facts which we filed in the Circuit Court, which presents our views of the testimony in the case and seems to us clearly to show that the findings of fact of the Circuit Court are in every respect correct.

> [References in the subsequent portion of the brief are to the original paging of the Record.]

First.—The following facts may be regarded as conceded: that the weather on the morning of the collision was fine and clear; that navigation, either to windward or to leeward of the schooner's course, was unobstructed; that the steamship was proceeding on a course about south southwest at the rate of about ten miles an hour; that the schooner was proceeding at the rate of about eight miles an hour; and that the two vessels were plainly discernible from each other for more than a quarter of an hour before the collision.

It is plain, therefore, that the fault which caused the collision was not committed during the last one minute or the last two minutes before the vessels came together, but long before that time, when the steamship elected to continue upon a course which needlessly put the schooner into imminent peril. The fault was in bringing the schooner into danger at all, not in any effort made to extricate her from the danger into which she was so needlessly put.

This is evident upon the very face of the original answer of the claimants. This answer is noticeable for containing the story of the collision *twice over*. The second narrative, commencing at page 32, is obviously the steamer's story. It states that the schooner was seen when two miles off bearing from one to two points on the steamer's port bow, the steamer then heading "somewhere from about south by west to south southwest." Elsewhere the answer states the course of the schooner at that time as being "north to north by west." The speed of the two vessels was nearly equal. These courses then were crossing courses, which must bring the two vessels in collision if continued. And they were continued, according to this story of the answer, until the vessels were half a mile apart, or within a minute and a half of the collision; for then it is that the answer says that the schooner "*appeared* to be keeping off, being, *as was supposed*, on a port helm," when the steamer's helm was ported and a small change of her heading was made, followed by the immediate starboarding of her helm and the collision. If this story of the steamer were to be taken as being the true one, she has placed the case exactly within the language of the Supreme Court in the case of the *Genesee Chief* (12 How., 461).

"He" [the captain] "saw the steamboat coming "directly upon him; her speed not diminished; nor "any measures taken to avoid a collision. And if, "in the excitement and alarm of the moment, a dif- "ferent order might have been more fortunate, it "was the fault of the propeller to have placed him "in a situation where there was no time for thought; "and she is responsible for the consequences. She "had the power to have passed at a safer distance, "and had no right to place the schooner in such "jeopardy that the error of a moment might cause "her destruction and endanger the lives of those on "board. And if an error was committed under "such circumstances, it was not a fault."

See also the case of The *Carroll* (8 Wall., 302), in which the same rule was applied to a steamer which, having seen a sailing vessel for fifteen minutes, made no change of course to avoid her till *four or five minutes* before the collision. Here no change was attempted till within a *minute and a half* of the collision.

Circumstances can scarcely be imagined where bringing two vessels into dangerous proximity could be more utterly unnecessary and inexcusable than those existing in the present case, viz., clear weather, a good breeze, broad daylight, and the open ocean.

Second.—It is perfectly plain upon the pleadings and the proofs that when the steamship and the schooner came in full sight of each other, and thereafter until they were in close proximity, the

course of the schooner was north by west or thereabouts, and the steamship was in such a position as to bear off the starboard bow of the schooner, and that the courses of the schooner and the steamship were crossing at an angle represented by about three points of the mariner's compass (this position is shown by the diagram submitted herewith marked A).

This position was fully conceded by the claimant in its answer, and admitted by its counsel upon the argument in the District Court, and is fully substantiated by all the evidence in the case. It was never pretended or suggested by any one until the argument on behalf of the appellant in the Circuit Court that the positions and courses of the two vessels when they came in sight of each other, and for a long time thereafter, were not those above stated, and shown upon diagram "A"; and it is very obvious that the ground taken in respect to this matter by the appellant's counsel at the Circuit was neither suggested by the pleadings nor by the proofs, but only by the exigencies of the appellant's case, and because it was obvious to him that to concede this first position was fatal to the appellant's claims. If the two vessels were in that position at the outset, so that their courses crossed in the manner stated, and the duty was imposed upon the schooner to keep her course, and upon the steamer to keep out of the way, plainly the steamer has no excuse for the disaster. For even if it should be found that the schooner did make any mistake *in extremis*, it was plainly the result of her having been brought needlessly into peril.

The evidence from the pleadings and the proofs that the schooner's course was north by west, and

that the steamship bore off her starboard bow, is conclusive.

As to the course of the schooner, *vide:*

Libel, *p.* 2. "Schooner close hauled and heading about north to north northwest."

Answer, *p.* 31. "She was heading by compass (before the change in her course as hereafter stated) from north to north by west or thereabouts."

Morton, *p.* 47. "She was hauled as close to the wind as she could be hauled." "She was bearing in shore." "The wind was a little to north of west at the time, and she was sailing her course just as near to the wind as she could, and appeared to be bearing in the land."

"I should say she was sailing northwest, may be a little to the north of that. I am not enough acquainted with sea-faring life to determine."

Newman, *p.* 52. "She was a little to the north of looking at me. She was about describing a tack, as we call it, off to Shark's river. She had been ranging so as to make north north-east. [Obviously a misprint for north north-*west*. See next answer.]

p. 53. "Q. About on what course was she if you can tell by the compass?"

A. "I can't tell by the mariner's compass; she was one-fifth of the quarter of the circle from *northwest to north;* if it was a surveyor's

compass I could tell more about; it was about one fifth of that half-quarter of a circle."

p. 55. "They seemed to be coming a little angling, the schooner standing to the northwest and the steamer outside of her, running the course of the beach."

Beebe, *p.* 58. "Q. How was the *Susan E. Wright* sailing?"

"A. She was heading about a little on the land, about north by west, I should judge.

"Q. Close hauled?

"A. Yes, sir.

"Q. Did she continue that course?

"A. Heading north by west? yes, sir."

p. 62. "She was sailing by the wind the same as I was, on a steady course by the wind."

Mount, *p.* 65. "The course was by the wind."

p. 69. "I should judge she was heading about north by west, or perhaps half a point either way from it."

p. 77. "Q. And your course was from north to north by west and north, northwest?"

"A. Yes, sir; north by west and sometimes north, northwest I suppose."

Hirst, *p.* 85. "Q. How were the sails with reference to the wind?

"A. Oh, all sharp up, you know.

"Q. On which side?

"A. To the starboard, which was leeward; the port was the weather side."

Lucken, *p.* 92. Q. "How were the schooner's sails?

"A. By the wind.

"Q. How was the wind?

"A. That is what I can't tell you; of course we were laying into the land, and the wind was from the northward and westward."

Johnson, *p.* 95. "Q. How was the *Susan E. Wright* headed at that time?

"A. I should judge she was heading about north by west."

(This was when steamer and schooner were inside of two miles of each other, p. 97).

"Q. How were the sails trimmed?

"A. By the wind, steering by the wind.

"Q. What was the direction of the wind?

"A. I think it was about west northwest; it veered around sometimes a point or two points; sometimes from west by north to northwest by west."

Nelson, *p.* 115. "The booms were on the starboard quarter; she was sailing close-hauled."

Norwood, *p.* 126. (When I first noticed the steamer) "our schooner was heading, at the time about north or north by west." (This was at the distance of one mile from the steamer, p. 127).

p. 145. (When I first saw the steamer,) "the schooner's course was north or north by west."

As to the bearing of steamship from schooner, *vide*:

Libel, *p.* 2. "The steamship *Benefactor* was observed by those on board of said schooner on the lee or starboard bow of the said schooner distant from two to three miles."

Answer, *p.* 31. "The steamship coming down the coast, being then about half a mile distant and bearing a little on the schooner's starboard bow."

Mount, *p.* 68. "A. She bore on the starboard bow.

"Q. How much?

"A. Well, perhaps a point or a point and a half, from one point to two, say."

Hirst, *p.* 85. "I saw her from about a quarter of a mile to half a mile ahead of us, a little inclined to our lee side. That was the starboard side of the vessel, the lee side."

"She looked as if she was coming towards us."

Jonhson, *p.* 97. "Q. How did the steamer bear from the schooner?

"A. Possibly bearing along north by east or north northeast, probably.

"Q. The steamer bore from the schooner at that time about north by east?

"A. Yes, sir, from that to north northeast." *p.* 102-3.

"Q. How much did their lines of direction cross each other, if at all?

"A. About three points.

"Q. The schooner was crossing the steamer's course about three points?

"A. No; between the two of them; they were both crossing each other, one heading south (north) by west is one point; and the other heading south, southwest—south by west would be two points, and south, southwest three points.

Norwood, *p.* 126. (First saw steamer) "on our lee bow, that is, on our starboard bow nearly ahead."

(Steamer then about a mile off, *p.* 127.)

McNamee, *p.* 151. "A. When I first saw the steamer she was about six or seven miles away.

"Q. How did she bear at that time from you with reference to your bows?

"A. About three points under our lee bow on the starboard bow."

We have quoted this evidence somewhat fully, as we deem the establishment of this first position of the two vessels a matter of much importance in the case, and because there is no sort of foundation in the pleadings or the proofs for the pretence made at the argument at the Circuit, that at this point of time the course of the schooner, instead of being north by west or thereabouts, was north northeast.

The importance of this position is two-fold: *First*, It fixed the obligations of the two vessels, of the schooner to keep her course, and of the steamship to keep out of the way; *second*, when taken in connection with the conceded facts in respect to the relative positions of the vessels at the time of the collision and the angle at which the steamer struck the schooner (which were the same relative positions and the same angle as those existing when the vessels came in sight of each other as above stated), the strongest confirmation is given to the libellants' contention that there never was any substantial change in the course of either vessel down to the time of the collision.

When they came in sight of each other they were upon courses crossing by about three points. They continued upon those courses for a long time thereafter; when they struck, they struck at substantially the angle represented by these courses. (See Diagram B, submitted herewith showing the relative positions of the two vessels when they came together.)

As to the wind;

As the direction of the wind is of importance in connection with the expression "close-hauled" used in the foregoing quotations from testimony, we have collated the allegations of the pleadings, and the testimony of witnesses in respect to the direction of the wind at, and just prior to, the time of the collision:

Libel, *p.* 2—"About west northwest and baffling."

Answer, *p.* 31.—"From west to west northwest or thereabouts."

Morton, *p.* 47.—"A little to the north of west."

Newman, *p.* 56.—"The wind sprung up from the southwest very early; a good breeze, and kept hauling around gradually until it got to the northwest before night."

Beebe, *p.* 58.—"About west northwest."

Johnson, *p.* 96.—"About west northwest; it veered around sometimes a point or two points; sometimes from west by north, to northwest by west."

p. 101.—"West northwest, or thereabouts."

Nelson, *p.* 119.—"West."

Norwood, *p.* 126.—"About west northwest."

McNamee, *p.* 151.—"About west northwest; or northwest by west; baffling, sometimes west northwest, and sometimes northwest by west."

Watts, *p.* 174.—"From the westward—west northwest."

It is, therefore, unquestionable, that the wind at the time of collision, was about west northwest, so that the schooner sailing close-hauled, would be sailing at least as far to the westward as north by west, which would be five points from the wind.

Third.—The respective positions of the two vessels when they first came in sight of each other, and the courses upon which they were then proceeding were maintained until the collision took place, or if there was *any* change of course by either vessel, it was after they were in close proximity to each other, and when a collision had become inevitable.

We have shown that the vessels when they came together were substantially in the same relative positions toward each other which they occupied when they first came in sight, and we think the evidence plainly shows that these same positions were maintained by both vessels in the meantime.

Captain Mount has very clearly, and, we think, truthfully, stated the circumstances under which the two vessels came together, and what took place on board the schooner prior thereto.

Captain Mount, *p.* 68.—"I was watching her," (the steamer), "more or less all the time, and I didn't see her alter her course until I suppose the vessels were from three to five lengths apart, and then I see her slack her mainsails, and I see we were bound to have a collision, and I ran aft."

pp. 69 70.—"I went right aft as soon as I could get there."

"Q. Where did you go to?

"A. I went by the wheel.

"Q. And what did you do there?

"A. As I got there the pilot stepped away from it, and I got to it and tried to put it a-port, but I don't think that I moved it more than

two spokes for we was right in the act of the collision, and the steamboat was coming right direct at me so that I had to leave it; or if I stayed there perhaps I might have been killed, and I drove the man away and told him to go forward out of the way.

"Q. When the vessel struck, where were you standing?

"A. I think I had got near the mizzen-mast.

* * *

"Q. How far is that from the wheel?

"A. It is thirty-three feet, or thereabouts."

This statement of the circumstances attending the collision is certainly very reasonable in itself, and it is in harmony with all the other credible or trustworthy evidence in the case, and we feel sure that upon an examination of the whole testimony of Capt. Mount the Court will be satisfied that he is a truthful witness, and that he has testified with honesty and candor with respect to the circumstances of the collision.

The contention of the appellants is that between the time when the vessels were proceeding upon their original courses, and the time when they came together, two changes of course were made by each vessel, first by porting, and then by starboarding.

The claim of the appellants in this respect, as stated in the answer, is that when the vessels were *about half a mile* distant from each other, the pilot of the schooner ordered her wheel to be ported, so as to pass the steamship, port to port, and that by this movement the schooner's head fell off several points to the eastward, so as to bring the steamer on her port bow, but that when somewhere *within a quarter of a mile* of the steamship, the master of

the schooner took the navigation out of the charge of the pilot, hove the wheel hard a-starboard and brought the schooner's head to the wind, and athwart the steamship's course.

This is a plain concession by the claimants, that *until* the two vessels were within half a mile of each other, the steamer had kept upon her course, without making any effort to avoid the danger of a collision with the schooner. This, certainly, under the circumstances disclosed in the present case, with the vessels approaching each other at the combined speed of eighteen miles an hour, and the steamer, on account of her great leeway, also drifting rapidly off towards the schooner's course, was a wholly needless exposure of the vessels to danger of collision ; for long before that it must have been plain to those on the steamship, as it was to Captain Johnson of the *Blunt*, and to every one else who saw the vessels approaching each other, that unless one vessel or the other changed its course, a collision was inevitable ; the rules of law prohibited the schooner from changing hers.

The evidence offered on behalf of the appellant to sustain the allegations of its answer was derived from two of the men on board the *Benefactor*, at the time of the collision, and two of the men on board the *Susan E. Wright*, who, immediately after the collision, had been brought under the claimant's influence, in order to control their testimony in this case. Their stories, instead of being harmonious and consistent, are entirely inconsistent and irreconcilable. Oae of these witnesses was McNamee, the pilot on board the schooner, who testified as follows :

McNamee, pp. 151-2 : " I next observed the steamer when she was about within a quarter of a mile of

us; me and the captain was on deck, walking back and forward on the deck, and we stopped and looked under the boom, and saw the steamer was coming rather close.

"Q. What did you do then?

"A. I told the man at the wheel to put his wheel hard a-port, and I went and helped him to put it to port.

"Q. How much do you think you fell off on that port helm?

"A. We fell off about two points, I guess.

"Q. What then occurred on your vessel in regard to the wheel?

"A. The captain, he came and took the wheel out of my hand, and put it to starboard."

* * *

"Q. How much did he put it to starboard, if any, do you think?

"A. He must have put it to starboard, because the schooner came right up, head to the wind, with her sails all shaking; the steamer ported before I did."

p. 154. "Q. If both vessels had kept their course after you ported, and the steamer ported, about how far would they have passed from each other abeam, when they began to pass abeam?

"A. *About forty or fifty feet.*

"Q. Which side?

"A. On the port side."

pp. 155–6. "When I looked under the boom, I said I seen her, and I said she was coming rather close. * * *

"Q. At that time, as I understand it, she bore so that you thought that if they both kept on, the vessels would come together?

"A. Yes, sir.

"Q. You came to the conclusion that there would be a collision, and therefore you put your wheel to port, as you say?

"A. Yes, sir

"Q. And you think now that if you had not made that change the vessels would have come together?

"A. Yes, sir."

p. 157. "Q. And you say that you think that if the wheel had not been put to starboard that the vessels would have gone apart *forty or fifty feet?*

"A. Yes, sir."

p. 158. "Q. At the time that you say that the captain came to take the wheel, how far away did you say the steamer then was?

"A. She was about, I suppose, *between three and four lengths off the schooner.*

"Q. How long do you call the schooner?

"A. I don't know, sir; I suppose she is about 100 or 125 feet long."

p. 159. "Q. I understand that from the time when you saw the steamer six or seven miles away, as you say, until the time when you saw her a quarter of a mile away, your vessel held her course steady?

"A. No, sir; she did not hold a steady course.

"Q. How was she?

"A. Sometimes north by west, and sometimes north.

"Q. She was full and by?

"A. Yes, sir.

"Q. *Just as close to the wind all the while as she could be?*

"A. Yes, sir."

Certainly we do not need to discuss the effect upon the question of responsibility for the collision, of such testimony as the foregoing, if it were to be accepted by the Court as a truthful statement of the facts connected with the collision, viz.: that the vessels proceeding at a combined speed of eighteen miles an hour, had come within a quarter of a mile of each other—the schooner keeping her course, and the steamer making no effort to avoid a collision; that the pilot, in order to avoid the collision, *which would necessarily have resulted from the schooner keeping upon her course.* ported her helm, under the belief that by that manœuvre the vessels would be enabled to pass each other *within forty or fifty feet;* and that in that situation (the clear result of the steamer's violation of law), the master, acting upon his judgment, sought to avoid, or lessen the force of the collision by putting the helm to starboard. Obviously, if the collision had happened under the circumstances testified to by this witness, every court would hold that the fault which occasioned the collision was not any possible misjudgment of the pilot, or any possible misjudgment of the master, but the wrongful act of those in charge of the steamship, in bringing the two vessels unnecessarily into such perilous proximity to each other.

The other witness called by the claimants from our vessel was the mate, Norwood, who, at the time of the collision. was in the forward part of the schooner, attending to the chains, and who, immediately after the collision, was taken into the employ of the claimants, and remained in their employ except during a brief illness, until his testimony was taken by the claimants in the present case. He testified as follows:

Norwood, pp. 146-7. "I observed the steamer's change first, I think; in a few seconds after that the schooner changed her course; the vessels were then, I don't think, more than three-quarters or seven-eighths of a mile apart; the best of my judgment is that they were then not more than three-quarters of a mile apart; I don't think they were less; I should say that the schooner's head payed off two or three points on this change which would bring her course north by east or north north east.

"Q. Suppose the schooner had not thus payed off, in your opinion, would there have been a collision?

"A. *I think not;* the steamer would have passed inside to the port of us—*probably* a hundred yards or so; I can't be accurate.

"Q. How far would the steamer have passed to port after the schooner had payed off, as you have stated, if both the vessels had filled their canvasses?

"A. Probably two hundred to two hundred and fifty yards.

"Q. Did you notice any change in the course of either vessel after the changes I have referred to?

"A. I did.

"Q. What was the first change?

"A. I saw our schooner's bow coming to the westward; I was standing then on the same side of our vessel, within a few feet of where I was before; when I first noticed this change the steamer bore probably north, half west, from us, *coming about head and head; she was then probably less than half a mile from us*; in my best judgment she was was half a mile from us." * * *

"I *did not notice any change in the speed of the steamer.*"

He then, at *p.* 148, gives a diagram of the way in which the vessels came together; and at *p.* 149 a diagram of the pretended position of the two vessels as the schooner commenced swinging to westward. In respect to the latter diagram, it is enough to say: *first*, that, if it were accurate, it would show that even then there was the greatest danger of a collision between the two vessels by the steamship (which was confessedly making much leeway) striking the *port* quarter of the schooner; *secondly*, that if, after the first pretended change of course, the vessels had reached the condition represented by that diagram, so that the steamer bore several points on the *port* bow instead of the *starboard* bow of the schooner, it would have been utterly impossible, within the time and space described by the witness, to have got the vessels round into such position as to bring about such a collision as that which actually occurred by the stem of the steamer striking the *starboard* quarter of the schooner; and, *thirdly*, there could have been no motive which would have induced those in charge of the navigation of the *Susan E. Wright* to have attempted such a manœuvre as is alleged, viz. of *starboarding* her wheel. It is utterly incredible that the two vessels should or could have made within the last three-quarters of a mile, and while proceeding at the speed described, the pretended manœuvres stated by Norwood in his testimony and represented by his diagrams. And his testimony, as well by reason of its own inconsistencies as of the relations existing between him and the claimants from immediately after the collision down to the time when he testified in the case, is utterly unworthy of belief.

The claimants, at the very close of the case, and after an adjournment of more than sixty days, to enable them to call further witnesses, produced their mate, Paul Watts, a witness, who during the whole interval from the time of the collision, had been sailing in and out of the port of New York, and whose testimony might readily have been taken by them at the same time with the testimony of the other witnesses in the cause. But he was withheld until the last moment, and probably then called only on account of the comments made upon his absence from the witness stand.

His story is, that after the porting of each vessel's wheel the schooner luffed up into the wind, and that then the steamer's wheel was put to starboard, the engine stopped, the mainsail lowered, and that this last was done when the vessels were "*all of* 500 *yards or half a mile*" apart.

This story was so absurd that it called out even from the counsel for the claimants the question which it plainly suggests to the mind of the Court. "*What was the reason you did not clear her then, if she was half a mile away and your helm to starboard?*" (*p.* 173). Plainly, if this story were true, with the helm to starboard, the peak of the mainsail lowered *and the engine stopped*, no collision could have happened for want of motive power to produce the blow.

The claimants also produced and examined upon this point Nels Nelson, their man at the wheel, whose story of the movements before the collision is embodied in the following extracts from his testimony:

Nelson, p. 112. "I saw the schooner *Susan Wright* while I was on lookout; I think she was about

two miles off when I first saw her; I went to the wheel from the lookout and the man at the wheel went forward on the lookout; when I went to the wheel I took the wheel; the course was given to me—south southwest; I held the ship on that course; I afterwards noticed a movement on the part of the schooner; I saw her keeping off *a little;* an order was given to me at that time; the captain told me to port the helm; this order was given at the same time the schooner appeared to be keeping off; I changed about a point and a half, so that we headed about southwest half south; I noticed the schooner after that, she luffed right up; upon that the captain told me to starboard the helm, and struck two bells at the same time to stop the engine; I had hardly got steadied on the port helm when order came to starboard."

p. 115. "I can't say how long I saw the schooner before I took the wheel; it was a good time; she was sailing close hauled; from the time I saw the sails I did not see any change except she kept off *a little;* that was after I went into the wheel house. She remained two points on our port bow, from the time I first saw her up to the time of the collision, except that *after* she kept off a little, she bore about *a point and a quarter* on our port bow."

pp. 116–7. "*The vessels were close together when I saw the schooner coming up; the captain struck two bells before he took hold of the wheel; there had been no change in the speed of the steamer up to the time the two bells were struck.*"

p. 121. "*when we starboarded our helm she was close by.*"

"Q. Supposing the length of the *Benefactor* to have been a quarter of a cable's length long, how many lengths of the *Benefactor* were the vessels apart when you changed your helm from port to starboard?"

"A. I don't know; *she was close by;* a quarter of a mile."

The Court will see upon an examination of the testimony of this witness that he had evidently been schooled in the use of two expressions—the cable's length as the distance at which the vessel would have passed if both had ported their helms, and a quarter of a mile as the distance between the vessels when the pretended luffing by the schooner took place—and that he resolutely refuses to adopt any other standard of measurement of distance in respect to either of these two points than those which had plainly been furnished him in advance, except that, when pressed in respect to the distance apart of the two vessels at the time of the alleged luffing, he adopts his own expression of "*They were close together; the schooner was close by,*" which he several times repeats. The latter is to be considered as his own more truthful expression of the actual fact as it presented itself to his own recollection when pressed upon the subject; and his testimony clearly shows that the pretended luffing happened, if at all, *immediately* before the collision, and the pretended porting only long enough before that to enable him to turn the steamer's wheel once to port; and his testimony that the schooner kept off only *a little* wholly discredits the testimony upon that subject of the other witnesses called on behalf of the claimants.

In reply to these various, and diverse and inconsistent stories by the *employes* of the claimants, the

libellants have called two men who stood upon the shore watching the schooner, prior to and at the time of the collision, one above her and the other below her, upon the beach ; also the pilot in charge of the pilot boat *Blunt*, which was from half a mile to a mile *south* of the place of collision, and who was watching the steamer and the schooner as he saw them drawing rapidly together into dangerous proximity, and the pilot of the *Fay*, which was on the lee-quarter of the schooner, and about three-quarters of a mile away, and sailing upon the same course with the schooner ; and they all concur that no change of course of steamer or schooner was visible to them before the collision. Their testimony upon this subject is certainly worthy of the most careful examination and the most implicit confidence, for they commanded a view of the schooner from four different points of the compass, and must have seen any change of course if one had taken place. If she had ported her helm, the schooner would have run directly across the course of the *Fay*.

Morton, page 47. "Q. From the time you saw the steamer and the schooner did either vessel change her course up to the time of the collision ?

"A. I can't say that they did ; *I am satisfied that the schooner didn't, because I was watching her.*"

Newman, page 54. "Q. Did that schooner change her course from the time you first saw her up to the time of the collision ?

"A. No, sir ; she appeared to be holding the wind as close as she could.

"Q. Were you in a position where you could tell ?

"A. Yes, sir; looking right at her. * * * *

"Q. Did you observe any change in the course or direction of the steamer?

"A. No, sir; none whatever.

"Q. So that both vessels kept their courses from the time you first saw them up to the time of the collision?

"A. Yes, sir."

p. 56. "Her course was not changed from the time I first saw her until she struck."

Beebee, *p.* 58. "Q. How was the *Susan E. Wright* sailing?

"A. She was heading about a little on the land; about north by west, I should judge.

"Q. Close hauled?

"A. Yes, sir.

"Q. And how were you?

"A. Just the same by the wind.

"Q. Did she continue that course?

"A. Heading north by west, yes, sir."

p. 62. "She was sailing by the wind the same as I was, on a steady course by the wind; I never saw any change in the schooner at all in her helm. * * *

"Q. You say you didn't see any change in the course of the schooner at all?

"A. No, sir.

"Q. If she had changed her course, would you have noticed it?

"A. Yes, sir: because I was looking at her pretty much, because we were sailing both together.

Johnson, *p.* 98 "I noticed they were going to come together from what I saw; I could plainly see that the vessels were about coming together.

"Q. Why did you conclude that—from the courses you were on?

"A. Yes, sir; I could see no alteration in their courses, and I knew they must come to gether, if there was no alteration."

We have, then, the strongest confirmation from four neutral witnesses, not under the control of either party, occupying wholly different positions in respect to the vessels, one upon the lee quarter, another south, another southwest, and another northwest of the schooner at the time of the collision, and all concurring in the testimony that they were watching the vessels at and prior to the time when they came together, but could see no change of course.

Certainly such testimony as this carries with it most convincing force, and entirely outweighs the inconsistent evidence of the witnesses called by the claimants. It is incredible if there had been such a change of our course as is asserted on behalf of the steamship here, that the four neutral witnesses to whom we have referred should not have seen it; and it is equally incredible if it was visible to them, that they should all concur in denying it.

Fourth.—Collating now the evidence of Nelson, the man at the wheel of the *Benefactor*, and Pollock, its engineer, we are able to fix with precision from the testimony introduced on behalf of the steamship itself the time when the first step was taken on board the steamship to avoid a collision, and to show that that step was not taken until the vessels were already *in extremis*.

The engineer, who was in no situation of responsibility for the collision, and who at the time of its occurrence was removed from the

excitement affecting those on deck, testified as follows:

Pollock, *pp.* 123–4. "The first thing I heard was the bell strike to slow; that order was obeyed right away by the oiler, who was standing under the throttle-valve; I saw him slow the engine; he had it done by the time I got alongside of him; immediately after we got the other bell to stop; that bell was obeyed promptly; it was done at once; the oiler did that; I was standing by his side; he had not taken his hand off the throttle-valve from the time of the first order; *the engine was stopped in about two seconds after the first bell was sounded: I felt the collision*; *the collision happened a few moments after the second bell; it was just about a few seconds.*"

p. 125. "We could not have got the engine under stern way between the time of getting the second bell and the collision; *the collision happened almost immediately after the second bell.*"

Now, referring to the testimony of Nelson, already quoted, we find that the ringing of the bells to stop the engine (which Pollock says was immediately before the collision) was concurrent with the steamer starboarding her helm, and that she began to starboard her helm immediately after the helm had been ported, and when the wheelsman had hardly got the steamer steadied under the port-helm; and until he had commenced porting his wheel no effort of any kind had been made on behalf of the steamer to avoid the collision.

The steamship then continued on her course up to the point of time when Nelson received the order

to port the helm. He then ported it *one turn of the wheel around*, (*p.* 116), when the two bells were rung to slow and stop, and the wheel was starboarded, and the collision immediately took place. It is so plain as to require no further elaboration or discussion upon the evidence of these two witnesses for the steamship, called by the claimants, that the manœuvres of porting and starboarding, about which so much discussion was made at the argument, all took place within a few seconds of the time when the vessels came together, and after they had been brought into the most perilous proximity by the misconduct of those in charge of the steamship.

This certainly abundantly confirms the evidence of Mount and the evidence of the neutral witnesses already cited that, prior to the collision, no substantial change in the course or the speed of the steamship was apparent to any one, and if these two witnesses who have been produced by the steamship are to be believed, there can certainly be no question as to the responsibility of the steamship for the disaster which took place.

If, as their testimony shows, the steamship was kept upon the south southwest course at full speed until a few seconds before the collision, no Court could hesitate to hold the steamship to the fullest responsibility for the disaster.

In this connection it seems proper to call the attention of the Court to the fact that the seaman Peter, who preceded Nelson at the wheel, and then, as Nelson testifies, went out upon the forward deck, as lookout, and there remained until the time of the collision, has not been called by the claimants, nor has his absence been in any way accounted for. He was in the employ of the steam-

ship, and might have been called to prove what took place while he was at the wheel, and from the time when he left to the time of the collision. He is shown to have been upon the forward deck in a position the most favorable for seeing any change of course of the schooner, if any such took place; it may be safely assumed that if he had seen any such change of course he would have been called to prove it; and that the reason why he was not called was that he could not swear to any such change having taken place.

If we had changed our course it might have been readily proved by this witness from their own deck, without the necessity of tampering with our mate, to induce him to swear to a change of course which their own lookout did not see.

Fifth.—It is plain upon all the evidence in the case, (although there is some conflict as to time, distance, and direction, which is to be attributed to the excitement consequent upon the collision between the two vessels), that the steamship continued upon a course away from the sinking schooner, for a very considerable distance and a very long time after the disaster, and thereby committed that fault which has often received the severest reprobation of the courts, not alone as indicating the inhumanity of the persons in charge of the navigation of the uninjured vessel, but as a proof of the consciousness of guilt, which suggests escape from the scene of a wrongful act.

Into the details of this misconduct we do not propose to enter. It is enough to say that long before the steamship which had been in contact with the schooner had returned, the schooner's officers and crew had been rescued by boats from the *Blunt*,

which, at the time of the collision, was more than half a mile away, and the schooner *Fay*, which at the time of the collision was three-quarters of a mile from the schooner, had passed far beyond the place where the collision occurred. The rescue of the officers and crew of the schooner from the peril into which the steamship had brought them was made by the friendly hands of others, who, at the time of the collision, were far away ; if it be urged that the steamship could not sooner have returned, we ask no better proof of the inexcusable speed at which she was moving at the time when the vessels came together.

Sixth.—The next proceeding on the part of the steamship—the tampering with the men in the schooner's employ—was hardly less reprehensible, and showed that the tardy return of the steamship and her taking on board the rescued sailors from the schooner, was prompted by no motives of humanity, but merely from considerations of prudence and policy, and as a means of fomenting, if possible, in the schooner's crew a conspiracy to defeat the just claims of her owners for redress. The delay in the rescue was certainly an indication of their own consciousness of guilt ; and an equally strong indication of the same thing is found in the persistent effort then instituted and thereafter continued, as the proofs show, down to the time of the trial of the cause, to bring and keep under their control and influence the witnesses who were on board the schooner at the time of the collision. If the steamship were faultless she had witnesses enough in her own pilot house, and upon her own deck, to prove her innocence, and needed not to

tamper with the witnesses on the deck of the schooner to procure the proofs.

Immediately after the schooner's crew were taken on board the steamship, we find Captain Woods, of the steamship, with Norwood and McNamee and Burns drinking together in the *Benefactor's* cabin, and we find these convivialities continuing while they remained on board the *Benefactor*, and until her arrival at the dock in New York. We then find the wheelsman of the *Benefactor* sent to a boarding-house with the schooner's crew; Norwood, the mate, employed within a few days. on the *Gulf Stream* in Clyde's line, then transferred to the *Benefactor* as mate, and remaining, except during a short illness, in the same employ until the time of the trial of this cause in the court below. We find one Lowden at every corner, laying hold of Norwood and Burns and McNamee, giving them money and employment, and procuring *ex-parte* statements from them in respect to the collision; and as to the relations between the pilot McNamee and claimants, nothing more could be desired than the internal evidence contained in *p.* 31 of the claimant's answer, which must have been taken from the pilot's lips. It is inconceivable that the story as stated there could have been derived from any other source than from the pilot of the schooner, and from the pilot under a strong stimulus to make a statement hostile to the master of the schooner. This stimulus is to be found in the personal difficulty with the master upon the question of countersigning his bill for services, and in the solicitations of the claimants.

The evidence upon this subject will be found at the following places in the record:

Answer (*p.* 31).

Mount (*p.* 163).
Wamke (*pp.* 163–5).
O' Halloran (*pp.* 166–7).
Hirst (*pp.* 167–70).
Pollock (*p.* 124).
McNamee (*pp.* 159, 161, 171).
Norwood (*pp.* 138–9, 141, 142, 142–4).

The effect of this evidence is not alone to discredit the witnesses themselves, but to discredit the claimants who deemed it necessary to resort to such means as are described therein, in order to sustain their attempted defence. The remark of Dr. Lushington in *The Commerce*, (3 *Wm. Rob.*, 295), "The "court is not pleased when it sees an attempt to "bolster up a case, whether good or bad, by going "into the enemy's camp, to fish up an affidavit," is pertinent to this case. It certainly would not have occurred to parties conscious of their own innocence in the transaction to resort to such devices to prop up their contentions.

Seventh.—The testimony taken at the circuit is chiefly useful for the purpose of developing what the counsel for the appellants has described as the "Psychology" of the collision.

The present master of the *Benefactor* was called to describe that vessel, to show how much leeway she would make, sailing the course upon which she was sailing prior to the collision (thereby plainly showing how much more she would bear down upon the schooner's course than the strict course by the compass would indicate), and also to answer some general questions in respect to the course usually pursued by that steamer in passing down the coast. At *p.* 236 he is asked by the counsel for the appel-

lant the following question: "Suppose the *Benefactor* bound down off Squan, with the wind strong on her starboard side, meeting a vessel bound up, *other things being equal*, which would be the proper side to pass the vessel?" To which he answers: "In that case, in a vessel like the *Benefactor*, I "should be very apt to port my helm, in *letting her pass me*, the port side."

At *p.* 245, in reply to the question: "With the *Benefactor* you generally try to give a close-hauled vessel a wide berth, do you not?" he answers: "No, sir; we do not calculate on that; *we consider* "*that we have as good a right to sail along this* "*coast as the schooners have*, and we give them a "*comfortable* berth."

And Capt. Reed, in the employ of a steamship company under a common management with the claimant, testifies (*pp.* 248, 250–2) that he navigates his vessel, and has done so for many years, upon the assumption that a sailing vessel in proximity with his steamer would not keep her course, but would change it.

It seems to us that the testimony of these two masters, called by the claimants, as experts upon the subject of navigating steamships, and both substantially in claimant's employ, reflects much light upon the motives and purposes which controlled the action of Captain Woods on the morning of the collision, viz., that the steamship had as good a right upon that coast as the schooner; that it would be convenient to *let her pass* to port; and that a schooner, when in close proximity with a steamer, would not keep her course, but would port her helm; and the necessary consequence of conducting the navigation of steamships upon the theory that schooners will not obey the law, but will (or

can be made to) port their helms, is that when, as in the present case, a schooner does obey the law, and keep her course, the steamship navigated upon that principle will run her down; and we submit that the proofs all show a determined insistence by those in charge of the steamship upon keeping her course in violation of the rule of law applicable to the two vessels, and a persistent effort to compel the schooner to port her helm in order to avoid the collision. Such a course of navigation as that, on the part of steamships, upon one of the great highways of our commerce, certainly deserves no countenance, but, on the contrary, merits the severest reprobation of the court.

Fifth Point.—It may be proper to call the attention of the Court to the facts in respect to the testimony of McNamee. At the trial in the District Court we subpœnaed him and had him in court, as he was one of the persons on our vessel at the time of the collision, but we declined to call him to the stand as our witness. The claimant subsequently called him, and his testimony is printed at pages 82–91, 95–6, of the record. At the trial in the Circuit Court the claimant refused to read his testimony, and we read what he had testified to on the subject of the collision in the court below. We have already expressed our views of his testimony.

Sixth Point.—The decree appealed from should be affirmed, with costs.

EVARTS, SOUTHMAYD & CHOATE,
Proctors for Insurance Companies, Respondents.

CHARLES H. TWEED,
ROBERT D. BENEDICT,
Advocates.

OFFICE SUPREME COURT U. S.
FILED
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JAMES H. McKENNEY, Clerk.

SIMPSON'S LAW PRINTERY 91 William Street, N. Y.

U. S. SUPREME COURT.

WILLIAM H. MOUNT, *et al.*,
Libellants and Appellees,

vs.

THE STEAMSHIP "BENEFACTOR," her engines, &c. (THE NEW YORK AND WILMINGTON STEAMSHIP COMPANY),
Claimant and Appellee.

Points on part of Libellants and Appellees.

The collision between the steamship "Benefactor" and the schooner "Susan Wright," in controversy in this suit, took place a little after ten o'clock in the forenoon of the 26th day of February, 1878, off Squan Beach, New Jersey, and about three miles distant therefrom.

The weather was fine and clear, and the navigation either to the windward or leeward of the schooner's course unobstructed. The steamship was bound from New York to Wilmington, and the schooner from Matanzas to New York.

The steamship was proceeding on a course about south south-west, making much leeway, and the schooner about north by west, close hauled, the wind being about west north west and strong. The speed of the steamer was about ten miles an hour, that of the schooner about eight miles an hour.

OFFICE SUPREME COURT U. S.
FILED
NOV 8 1880
JAMES H. McKENNEY, Clerk.

SIMPSON'S LAW PRINTERY 91 William Street, N. Y.

U. S. SUPREME COURT.

WILLIAM H. MOUNT, *et al.*,
Libellants and Appellees,

vs.

THE STEAMSHIP "BENEFACTOR," her engines, &c. (THE NEW YORK AND WILMINGTON STEAMSIHIP COMPANY),
Claimant and Appellee.

Points on part of Libellants and Appellees.

The collision between the steamship "Benefactor" and the schooner "Susan Wright," in controversy in this suit, took place a little after ten o'clock in the forenoon of the 26th day of February, 1878, off Squan Beach, New Jersey, and about three miles distant therefrom.

The weather was fine and clear, and the navigation either to the windward or leeward of the schooner's course unobstructed. The steamship was bound from New York to Wilmington, and the schooner from Matanzas to New York.

The steamship was proceeding on a course about south south-west, making much leeway, and the schooner about north by west, close hauled, the wind being about west north west and strong. The speed of the steamer was about ten miles an hour, that of the schooner about eight miles an hour.

The two vessels kept such respective courses until in close proximity, when the steamer attempted to pass to the leeward of the schooner, and the helm of the schooner was put a little to port. The collision almost immediately followed, the stem of the steamer striking the starboard quarter of the schooner, cutting it away to the stern post (fol. 70), in consequence of which the schooner and cargo became a total loss. (See findings of fact of the Court below, page 142 of Record.)

There were two theories of fact presented, respectively, by the parties to this action for the consideration of the Courts below.

The libellants contended that the vessels were sailing on crossing courses, and in such directions as to involve risk of collision; that the libellants' vessel, the schooner "Susan Wright," kept her course and the steamer "Benefactor" kept her course until it was too late to avoid the collision.

On the other hand the claimants contended that the schooner changed her course by suddenly luffing up into the wind and onto the course of the steamer, and which change brought about the collision. (See answer fol. 38 of Record.)

The libellants submitted that, on the evidence, either theory led to the same conclusion of law, for the change (if any) on the part of the schooner, on the claimant's own showing, was made *in extremis*, and the steamship therefore in fault.

The Courts below took this view of the case, and found, as matter of fact, that the collision was owing to no change of course on the part of the schooner. The language of the Circuit Court in this connection was as follows: "I am disposed to rely upon the evidence of "the captain of the schooner, which is clear and con-"sistent throughout, and is in apparent harmony with

' all the circumstances of the case. If his testimony is " credited, there was no change, except in the moment " of peril. He attempted to put his wheel aport, but " did not succeed in the attempt. The emergency " compelled him to abandon the wheel, and go to the " forward part of the vessel. Whatever was done in " this crisis, whether wise or otherwise, is not to be " charged as a fault upon the captain; it is the fault of " those who forced the emergency upon him."

" In the same effect is the evidence of the pilot of the " schooner ' McNamee'."

The testimony to support this finding appears in the evidence of Captain Mount at folios 68–70 of the record, and is as follows:

"Q. Can you state what you saw from the time you " first saw the steamer with reference to her course? " A. Do you mean in relation to the steamer's " course?

"Q. Yes. A. Well, I was watching her more " or less all the time, and I did not see her alter " her course until, I suppose, the vessels were from " three to five lengths apart, and then I see her " slack her mainsail, and I see we were bound to " have a collision, and I ran aft. I was forward or " about amidships of the vessel, near the centre of " her so I could see to leeward. I see her slack " her mainsail, and, I think, she tried to keep off, " but I didn't notice enough to say whether she " changed her course or not; if she did it was very " trifling. * * * *

"Q. You say that at that time you started and " went aft? A. I went right aft as soon as I could " get there.

"Q. Where did you go to? A. I went by the " wheel.

"Q. And what did do you there? A. As I got " there, the pilot stepped away from it, and I

" caught it and tried to put it aport, and I don't " think I moved it more than two spokes, for we was " right in the act of collision, and the steamboat " was coming right direct at me, so that I had to " leave it, or, if I staid there, perhaps I might " have been killed, and I drove the man away, and " told him to go forward out of the way.

" Q. When the vessels struck, where were you " standing? A. I think I had got near the mizzen " mast. * * * * *

" Q. How far is that (the mizzen mast) from the " wheel? A. It is 33 feet or thereabouts; maybe a " little less. * * * It may be 30 feet."

The pilot McNamee's testimony will be found commencing at folio 150 of the record. This witness was called by the claimant. He states at folio 155 on his cross-examination by libellants' counsel:

Q. " When you observed the steamer the second " time, when you say you looked under the boom " and saw her, how did she bear from you then? " A. She bore about north by east or north north- " east; I didn't look particularly, sir.

" Q. Which way was your vessel headed? A. " North by west, sir.

" Q. I think you said she was coming pretty " close, and yet you now say she was bearing the " same as when you first saw her? A. When I " looked under the boom I said I seen her, and I " said she was coming rather close.

" Q. Did she bear differently then from what she " did before or just the same? A. No, sir; she bore " differently.

" Q. How did she bear when you first saw her? " A. Bearing along about north northeast.

" Q. How the second time? A. About north by " east as near as I can come to it.

" Q. Came up one point nearer? A. Yes, sir; " hauled up to the westward more.

"Q. At that time, as I understand it, she bore so "that you thought, that if they both kept on, the "vessels would come together? A. Yes, sir.

(Fol. 157.)

"Q. And you say that you think that if the "wheel had not been put to starboard that the ves- "sels would have gone apart 40 or 50 feet? A. "Yes, sir.

"Q. Didn't you tell us yesterday afternoon that "they wouldn't have gone apart more than 25 or 30 "feet? A. No, sir; I told you over 30 feet.

"Q. Didn't you say not over 25 or 30 feet? A. "No, sir; not to my recollection; I said they would "go over 30 feet apart.

"Q. Were you looking at the steamer when you "say the captain came and took the wheel? A. "Yes, sir.

"Q. How was the steamer bearing then? A. "She was bearing near between north and north by "east; I didn't take particular notice how she was "bearing.

"Q. She didn't change her bearing at all? A. "Yes, sir; she changed her bearing.

"Q. Didn't you just say that when you saw her a "quarter of a mile off she bore north by east? A. "She bore north northeast when I first saw her, and "north by east when I saw her a quarter of a mile "off.

"Q. When you first saw her, six or seven miles "off, she bore north northeast? A. Yes, sir.

"Q. And afterwards, when she came up to with- "in a quarter of a mile, you say she bore north by "east? A. Yes, sir.

* * * * * * *

"Q. Did you take particular notice how she was "heading? A. She looked to me to be heading "along about south southwest or southwest by "south; she was heading in for the beach.

"Q. How had she been heading before? A. "Heading down about south southwest; may be a

"little to the westward of it. I noticed her alter "her course and haul up more for the beach.

"Then you think she changed her course about "a point? A. Yes; near about a point.

"Q. *At the time that you say that the captain "came to take the wheel, how far away do you say "the steamer then was?* A. *She was about, I sup-"pose, between three and four lengths of the "schooner.*

Q. How long do you call the schooner? A. I "don't know, sir; I suppose she is about 100 or "125 feet long.

"How do you say the wheel was at the time the "captain took it out of your hand? A. It was to "port.

"How much to port? A. The wheel was hard "down, nearly hard-a-port."

Captain Mount (folio 163) swears:

"Q. How long would it take on your vessel to "get your wheel over from being nearly hard-a-"port over to hard-a-starboard with such a wind as "you had that day? * * * A. I should judge "it would take from one to two minutes."

We have quoted this testimony to show that Captain Mount's testimony "is in harmony with all the circumstances of the case," as the Circuit Judge remarks (see opinion folio 267 of Record).

This evidence of the master and pilot fully supports the conclusions of fact of the District and Circuit Court. It will be noticed that the pilot says the schooner's wheel, just before the collision, was put to starboard, while the captain says he put it not more than two spokes to port, "*right in the act of the collision*," (fol. 69). The pilot says (152), "*he must have put it to starboard, because the schooner came right up head to the wind with her sails all shaking.*" The Court below found the fact in accordance with the captain's statement, for one reason,

doubtless, that as the master was believed to be a creditable witness, and as he had his hand actually on the wheel, it was a matter concerning which he could not be mistaken, while the pilot's conclusion was a mere matter of reasoning, from the circumstance of the sails shaking, as they doubtless did when the two vessels were in close proximity. But we submit either story leads to the same conclusion. If we accept the pilot's story the wheel was starboarded in *extremis*; if the captain's, the porting of the wheel had a tendency to throw the schooner away from the alleged course of the steamer. Both agree that the change was made in *extremis*, (see the pilot's testimony, fol. 158). The answer charges a "luffing," (fol. 38) and not a keeping away to leeward.

In view of the Act relating to appeals in Admiralty, February 16th, 1875, Statutes at Large, Chapter 77, page 315, that the review of the decrees entered upon the findings of fact by the Court below, upon appeal, shall be limited to the determination of the questions of law arising upon the record, it would seem that any further discussion of the findings of fact of the Court below were unnecessary.

Even before that Act, Mr. Justice Davis in delivering the opinion of the Court in the case of the "Quickstep," 9 Wallace, 669, had made use of the following language: "The difficulty of discovering the truth in collision "cases, which are mainly trials of fact, grows out of the "character of the evidence, which is always more or less "conflicting. The Court that can see the witnesses, hear "their statements, observe their demeanor, and compare "their degree of intelligence, is better able than an appellate tribunal to reconcile differences in testimony, "or, if that be not possible, to ascertain the real nature "of the transaction. The District Court that tries the "case in the first instance enjoys this advantage, and the "findings of fact by it, if followed by the concurrent "judgment of the Circuit Court is entitled to so much "weight in this Court, that it will be presumed a correct

" conclusion was reached, and before the decision will be " disturbed it must manifestly appear that it was wrong."

Under the Act of 1875, *supra*, the Supreme Court in Admiralty cases sits only in review of the law.

That the finding of fact by the Court, although against the weight of evidence if there is any evidence to support it, is conclusive in the Appellate Court, and such finding is not reviewable on exceptions, is well settled.

It cannot be contended here that there was no evidence to support the findings of fact below. In the light of the testimony of the captain of the schooner, who swears he ran to the wheel just at the moment of the collision and put it a little to port (not to starboard) if anything, and in the light of the testimony of the pilot of the schooner, who was called by the claimants, and whose testimony leads clearly to the conclusion that if any change was made in the schooner, it was made *in extremis*, a full discussion of the facts seems unnecessary. Mr. Justice Hunt remarks in his opinion (fol. 267 of record): " There is really but a single question of fact in the case, to wit., whether the schooner so deviated from her course as to justify the action of the steamer." We cannot conceive that this Court can, or will, take any other view than that all discussion on the finding of the Circuit Court is now at an end.

But it is claimed by the counsel for claimant that under the provisions of the Act of February 16th, 1875, Statutes at Large chapter 77, page 315, providing for a bill of exceptions as in cases at law, that the bill of exceptions should embody the claimant's proposed findings of fact and exceptions to the facts as found. It will be found on reference to the record that such proposed findings and exceptions are embodied in the claimant's bill of exceptions (see folios 281–312 of record). We have the authority of the learned Court in a similar case.

The "Othello," No. 234, on the present calendar of this Court, for saying that in his opinion such practice was irregular, as on these points the action of the Judge could not be reviewed; but, as it was intended to move this Court to settle the practice the bill of exceptions embracing the proposed findings and exceptions was signed in that case.

Counsel is not aware of any case arising under the act of 1875, where this question has been presented, and it may be important that the practice should now be settled in respect to the form and requirements of bills of exception in admiralty cases.

POINTS.

I.

There can hardly be said to be any question of law in this case, as the law is well settled, in respect to steamers and vessels on which rests the duty of avoiding an approaching vessel, not to attempt to "shave" such approaching vessel, and thereby to throw the latter into such a position of peril as that the mistake of a moment leads to the collision. The efforts of a steamer bound to avoid another vessel must be timely. In this case there was certainly room enough, as the steamer had the whole of the ocean to leeward, and there was time enough—the schooner was plainly seen miles away—(it was broad daylight) to have so navigated as in no way to jeopardize the sailing vessel. It was inexcusable neglect even to attempt to run within a cable's length, as the wheelsman of the steamer swears, but as the pilot of the schooner swears, within 30 to 50 feet of the course of the schooner when the two vessels were on crossing courses at a high rate of speed, approaching each other at a combined rate of 18 miles an hour or, approxi-

mately, 1,800 feet a minute. But Capt. Mount swears the steamer substantially maintained her course up to the time of the collision, a course not "to shave," but directly onto the schooner, striking her on the starboard quarter. But assume that the steamer's course was to pass on the port side of the schooner, the claimant's own witness (McNamee) judged the steamer would have cleared the schooner 30–50 feet, a very close "shave," if his judgment was accurate, formed, as it was, when the vessels were a quarter of a mile apart. This was too close, and if that theory be accepted, it is evident that McNamee's judgment as to such distance was as favorable to claimants as the facts warrant, because the moment the wheel should be put towards the starboard, the schooner would commence her luff; her headway would be checked, and her sails were shaking (so Norwood and McNamee swear) at the time of the collision. The starboard quarter of the schooner was hit, and she was 125 feet long. It is evident the schooner could have moved but a trifling distance across the alleged course of the steamer, between the alleged starboarding of the wheel and the time her sails were shaking (as alleged), at the time of the collision. We do not accept this theory of McNamee, but all the circumstances show that, if so, the steamer's course was not to exceed what McNamee estimated—to wit, to pass the schooner 30–50 feet on the port side of the schooner.

The authorities are numerous to support the law as laid down by the Circuit Court.

Judge Taney, in the "Genesee Chief," 12 How., 461, in giving the opinion of the Court, lays down the rule:

"*Nor do we deem it material to inquire whether the order of the captain, at the moment of the collision, was judicious or not. He saw the steamboat coming directly upon him; her speed not diminished; nor any measures taken to avoid a collision; and if in the excitement and alarm of the moment a different order might have*

been more fortunate, it was the fault of the propeller to have placed him in a situation where there was no time for thought, and she is responsible for the consequences. She had the power to have passed at a safer distance, and had no right to have placed the schooner in such jeopardy that the error of a moment might cause her destruction and endanger the lives of those on board. And if an error was committed under such circumstances, it was not a fault."

See also the "Western Metropolis," 6 Blatch., 210.
"Favorita," 8 Blatchford, 539.
Alabama, 1 Benedict, 488.
"Minnie Martin," 2 Bissell. 41.
"Argus," Olcott, 304, 313.
"City of Paris," 1 Benedict, 181.
"Narragansett," Olcott, 246, 388.
"Fairbanks," 9 Wal., 420.
"Carroll," 8 Wal., 304.
"Genesee Chief," 12 How., 461.
"Northern Indiana," 3 Blatch., 101.

The testimony bearing on this point may be found as follows—Mount (fol. 68):

I didn't see her alter her course until, I suppose, the vessels were from three to five lengths apart.

Nelson, claimant's wheelsman, (fol. 116) says he made no change till he ported; that he "had hardly got steadied on the port helm when the order came to starboard," and the engine was at once stopped. The collision happened then in a few seconds (Pollock, 124).

McNamee, for claimant.

"*When I looked under the boom I said I saw her, and I said she was coming rather close* (fol. 151).

(*Fol.* 157). *Q. And you say that you think that if the wheel had not been put to starboard that the vessels*

would have gone apart forty or fifty feet? A. Yes, sir."

Norwood, for claimant (fol. 82 see diagram), where it appears that just at the time of the alleged starboarding of the wheel of the schooner and her change of course, the steamer was headed for the port quarter of the schooner, making the steamer not merely "shaving" the schooner, but heading directly for her.

And this alleged change was made when the vessels were between three and four lengths of the schooner off —see McNamee (fol. 158)—and the schooner was 125 feet long. The vessels were approaching each other at about the combined rate of 18 knots an hour–1800 feet a minute. The vessels were accordingly about 16 seconds in time apart.

"We were running about eight knots *by steam*," Pollock, 125).

"With a fair wind she can run three knots faster," (Id).

"The schooner was going somewhere not far from eight miles an hour," (Mount, 67).

"I suppose the schooner was sailing seven knots," (McNamee, 151).

II.

As the learned counsel for claimants insists, that it is the duty of this Court to enquire into the questions of fact, in order to determine the questions of law, raised by his exceptions to the proposed findings, embodied in the bill of exceptions as settled, the Court may pardon us if we discuss very briefly the evidence bearing on the question of fact.

The evidence fully sustains the theory of fact of the

libellants, that the vessels did not change their courses, at least until it was too late for either to avoid the collision. With the burden of proof on the claimants, they did not convince the mind of the Court below to the contrary.

In considering the question of fact, to wit, this alleged sudden crossing by the schooner of the course of the steamer, we submit:

(1.) The defense is the stereotyped one by a vessel bound to avoid another, and should be carefully scrutinized.

(2.) The burthen of establishing such a defense is with the steamer. The defense should be so clearly established as to be beyond doubt.

Bearing these propositions in mind, let us consider the evidence bearing upon this issue of the case.

(*a.*) With the *onus* resting on them, the claimants call only two witnesses from the officers and crew of a large steamer. The action was commenced Feb. 27, 1875. The libellants immediately made efforts to examine their witnesses and did then (March 10, 1875), examine all their witnesses, save those who refused to obey the subpœna of the Court (see Tuttle, fol. 104), and the captain (Mount), who did not expect to go to sea. The claimant's witnesses were all seafaring men, but claimant only examined (March 29, 1875), Neilson. *The lookout on the steamer, who was called "Pete," was not examined at all, and his non-production was not accounted for.* The claimants examined other witnesses in the Circuit Court, not one of whom saw the collision. Besides Neilson, the only other witness examined by the claimant is Paul Watts, second mate, he being one of three witnesses whom the claimants reserved leave to examine within 30

days after the trial (fol. 171). Although this time was extended by consent the claimants did not call the remaining witnesses nor account for their non-production; and one of the witnesses, whom they obtained leave to call, and thus declared to be their witness (and it is abundantly shown in the evidence that he was in the interest of the steamer), was Burns, the man at the wheel of the schooner. Not calling him, they leave the contest of evidence on the question of the change of the wheel between Mount and the pilot.

(*b.*) The claimants, apparently mainly, rested this issue of fact at the trial in the District Court, on the strength of the testimony of witnesses procured from the schooner, to wit, the mate Norwood and pilot McNamee. It must be remarked here again, that neither of those witnesses swear to the actual starboarding of the schooner's helm by the captain (fols. 152, 146, 147).

This fact they infer from the schooner's sails shaking, &c., and this in the jaws of the collision, when each one was looking out for his own life. The captain, actually at the wheel, knowing better than any other the workings of his own mind and the response of his own hands, says he tried to port it—put it a little to port and not to starboard, (fol. 69).

As to Norwood, the Court is called upon to scrutinize the evidence which he gives, with great care. Human nature has hardly arrived at such a state of perfection in him, as to warrant us in the supposition that his course has been actuated by a pure love of truth and a mere desire for justice. The sentiment of loyalty to his vessel, which is universal in all true seamen, is absent from him. That sentiment no doubt in too many cases warps the evidence which seaman give in collision cases, but its absence is on this very accounnt a suspicious circum-

stance, which always attracts the attention of the Courts of Admiralty.

A duty rested upon Norwood to communicate the truth, whatever it was, to the counsel of his owners, and being an officer of the vessel to sign a protest, even if his statement did not agree with that of the master. This he refused to do (see his testimony and O'Halloran's, the notary, fols. 140-143, 166). But this statement which he refused to his master, and to the libellants' counsel, he voluntarily gives to a stranger whom he meets in the street; and that stranger, whom he had never seen before, he admits *he received money from*, before or *at the time of making the sworn statement to the claimant's counsel* (see Norwood's testimony, fols. 140-143).

Again he goes to a different boarding house on his arrival (fol. 145), and is immediately taken into the employ of the claimants, first in a nondescript position on the "Gulf Stream," (fol. 164), (which he denies) (fol. 134, 143), and second, he is mate on the "Benefactor," leaves her before he is examined *de bene esse* by the claimants and then returns to another vessel *of the claimant's* line (fol. 145, 495.)

These were motives enough to swerve from the the truth a rover of the sea, who had spent a good portion of his time, when not going to sea (some two years), in the penal colonies of Great Britain (fol. 132).

His case is not merely that of a witness called by the owners of the opposing vessel, who, under the power of a subpœna and the pressure of the oath to tell the whole truth, tells facts unfavorable to his own vessel. He seems to set himself at once against her. He seems to have at once struck hands with the people of the "Bene-

factor." He not only gave them all the information in his power, but he refused to give it to the owners of his own vessel.

(*c.*) The claimants' counsel in the Circuit Court not only made a violent attack upon McNamee, but has even gone so far as to advance the ridiculous idea that he was really a witness in the libellants' interest, and that the refusal of the libellants' counsel to call him was a scheme to obtain a "strategic advantage;" and he calls upon the Court to admonish "whoever aided and advised him in the arrangement of his testimoney!"

We submit that the circumstances show that if anyone is exposed to such admonishing, it is not the counsel for the libellants.

An examination of the answer in the District Court will easily satisfy anyone that the first of the stories of the collision contained in the answer (fols. 36, 38) was derived by claimants' counsel from McNamee himself. The presence in the answer of such averment as that of the pilot's "*stooping down* and looking under the mizzen-boom;" that the pilot then ordered the schooner's wheel to be ported *so as to pass* the steamship port to port, and that the vessels would have passed "as the pilot *had intended*,' can be accounted for in no other way.

And this agrees entirely with the conduct of McNamee in relation to the witnesses.

He was dissatisfied because the captain of the schooner would not pay his pilot bill. He immediately sets about, as soon as the schooner's crew are all on the steamer, to influence them: (see Hirst's testimony, fols. 167–169), is seen with the *important* witnesses of the libellants, treats them, gives Peter Burns, the wheelsman, his card to meet him next

morning, at the Pilot Commissioner's office, and actually meets them there the next morning, (fols. 160–169–171).

Such conduct of McNamee, followed up by the indications of the answers, were abundantly sufficient to make the counsel for the libellants refuse to put him on the stand themselves, determining that if the evidence of a witness who was so evidently interested for the claimants, was to be in the case at all, it must be in a shape in which he should be subject to a cross-examination in their hands.

And the fact that he was immediately put upon the stand by Mr. Owen is a demonstration that they were fully justified in their refusal to call him. To suppose that that experienced counsel called to the stand so important a witness, without the fullest knowledge of what he was going to testify, is to cast an entirely unwarranted aspersion upon the discretion of one whose discretion was never doubted; and to suggest that he was so taken in a trap set for him by the libellants' counsel acting in concert with a false witness, in order to the "introduction into the case of a statement," which is so filled with "craft and falsehood" as to call for the sending of its maker to States Prison—such a suggestion indicates a more lively imagination than we had hitherto given the claimants' counsel credit for.

We take no time to defend McNamee, although we see no reason whatever for charging him with either craft or falsehood. There was interest and prejudice in favor of the claimants which tended to warp his evidence, no doubt; but whatever that was, it was well known to the claimants' counsel when the witness was put on the stand, and the refusal of new counsel, on the trial in the Circuit Court, to read his evidence, cannot in the slightest

degree change the aspect in which the witness and his evidence stand before the Court, viz., that he is a witness, so accredited by the claimant by their putting him on the stand in the District Court, and exposing him to a cross-examination of the libellants' counsel, that the claimants cannot complain of any conclusion which fairly results from any portion of his evidence, whether brought out under their direct or our cross-examination.

(*d.*) The object of the steamer in putting back to port seems to have been really the hope of influencing or capturing the libellants' witnesses. She reaches New York in the afternoon, there is no examination and no repairs, and she leaves again that night at midnight, leaving two of her crew as companions for the libellants' witnesses. The *important* witnesses of the libellants, Norwood and Burns, received marked attention on the part of the officers of the "Benefactor." They were seen in private conversation immediately on coming on board the "Benefactor," and are found drinking with the officers, (see Hirst, fol. 168), to the exclusion of the other watch of the schooner who did not see the collision Peter Burns, the wheelsman of the schooner, also enters into the employ of the claimants, (see Wamke, fol 165).

The character of the testimony of these witnesses is vague, unreliable and uncertain, and contradictory, as the Court will see by referring to the testimony.

(*e.*) The answer alleges that the schooner changed her course under, as is inferred, a starboard helm, when the vessels were one-quarter of a mile apart (see answer fol. 38). But claimants' witnesses swear on the trial that this alleged change was when the vessels were three or four lengths apart. And McNamee swears that

the vessels, without this alleged starboarding, would have passed each other 30 to 40 feet apart only.

The only witness from the steamer, who says that the alleged change took place when the vessels were a quarter of a mile apart is Neilson, and he obviously is no expert in judging of distances (fol. 121-123), and says withal that the vessels were at that time *close together* (fol. 116), an expression which agrees with McNamee's evidence, that the vessels were then three or four lengths apart (fol. 158), and Mount's evidence that they were three to five lengths apart when he went aft (fol. 68).

The whole reason of the case shows, that if there was any such change at all, it was when the vessels were very close.

The Court will bear in mind that the change of course; which the claimants allege, is not a slight variation of a point or so; which might escape the notice of witnesses at a distance. The change which they allege is a change which brought the schooner right up in the wind, with her sails all shaking, and her headway almost entirely gone. It is almost impossible that such a change as shook the wind out of her sails, and left them flapping, would not have been noticed even by the two landsmen on shore. It is utterly impossible that it should have escaped the notice of the quick eyes of the experienced pilots, Beebe and Johnson.

This change of course and shaking of the sails of the schooner, though testified to by Neilson and Norwood, and to be inferred, perhaps, from the evidence of Watts and McNamee, is positively contradicted by Mount and Hirst and Beebe and Johnson and Morton and Newman, witnesses more in number and more disinterested. The change alleged (see fol. 218, new testimony,)

and argued by claimant's counsel, was from N. N, E. to almost West, nearly ten points.

Having considered the testimony of the claimants as to this alleged change of course of the schooner, having endeavored to show its suspicious and unreliable character, we now turn to the testimony of the libellants on this question.

(1.) Mount (fols. 68–70), who was at the wheel to the last, when all others had fled for their lives, swears that it was his intention to port, that he did port his wheel, and that the schooner did not change her course.

(2.) Beebe, Sandy Hook pilot for 23 years, pilot of the "Henry Fay," in company with the "Wright," following in her wake, one-quarter of a mile behind. He swears that the schooner did not change her course at all, and he took particular notice of her (fol. 58–62).

(3.) Johnson, Sandy Hook pilot for 25 years attached to the pilot boat "Blunt," who picked up the crew of the "Wright." He had just passed the "Wright," exchanged signals (fol. 96) with her pilot; watched particularly both the steamer and the schooner; made up his mind there would be a collision before the steamer reached the schooner, and called his mates up to see it and began to turn his boat to go to the rescue of the schooner's crew. He swears positively (fols. 99, 100) that there was no change in the course of either vessel.

(4.) Walter H. Morton (fols. 146–47) stood on the beach, two miles south of Shark River. He watched both vessels from the time they were half a mile apart (fol. 147). He confirms the pilots.

(5.) Clark Newman stood four hundred yards to the south of Shark River (fols. 52–56); looked the schooner right in the face (fols. 52–54). Noticed both vessels. No change in the course of the steamer or schooner (fols. 55–56). The vessels collided two miles below his standpoint in a diagonal direction one mile below him in a longitudinal line, nearly S. E. from him (fol. 57).

On this question of fact, therefore, we submit, in all confidence to the Court, that in fact there was no such change in the course of the schooner, as is charged upon her. All these witnesses except Mount are disinterested. They occupied different standpoints, and are all intelligent, experienced witnesses, the pilots notably so. Their credibility has not been attacked.

But if the captain of the schooner had put the wheel to starboard, it can make no difference with the result of this case, wholly independent of the point that it was done *in extremis*, for the vessels were only 3 to 4 lengths apart, or 400 or 500 feet in distance, in time about sixteen seconds when the captain ran back and took the wheel—and the smallest possible estimate given as to the time it would take to put the wheel to starboard was by McNamee, claimants' own witness, and his estimate was half a minute (fol. 170), while Mount made it two minutes. (162.)

III.

The brief of the counsel for claimants, in the Circuit (these points are prepared before the filing of his points in this court), hinges mainly on the allegation that the course of the schooner was north, north *east*, an allegation, be it noticed, which was not in the original answer, for that stated the course of the schooner was

from north to north by west." (fol. 36). The amended answer contains this new allegation.

(*a.*) It is to be noticed that this change of allegation on this important question (important, for if the schooner was heading north by west, she would see the steamer on her starboard bow, where if she was heading north north east, she would see the steamer over her port bow), is due not to any new evidence,since the trial in the District Court, but to a discovery in the old evidence. The counsel who tried the cause below was so far from seeing any such thing that in the petition of appeal, (fol. 191), while praying to have the cause heard on new proofs there was no request for any new allegations.

New counsel having been employed this discovery calling for this new allegation has been made.

(*b.*) The discovery, in question, amounts to nothing, and furnishes no foundation whatever for the new allegation. A change of allegation on so important a question should have some other ground than a manifest blunder in the taking of the testimony, and yet the sole foundation for it is that, when the witness, Newman, was examined, (at fol. 52) he, either by a slip of the tongue, said, or the stenographer wrote north, northeast for north, northwest; this is entirely obvious on an examination of the witness' evidence; he said that when he first saw the schooner, which was about southeast from him, (52) she was "heading towards me."

Q. So you looked her right in the face?

A. Yes, sir; almost; she was a little to the north of looking at me," (that is heading a little to the north of northwest,) "she had been ranging so as to make north, northeast, which should have been north, north-*west*. This is made entirely clear by his evidence at fol. 153 when he says her course was "one-fifth of the quarter of the circle from north-*west* to north * * *; it was about one-fifth of that half quarter of the circle." But north, northeast is not in that quarter of the circle at all.

(*c.*) The counsel for claimants entirely ignores the evidence of every other witness in the cause as well as the agreeing allegations of libel and answer on this question: and on the strength of this blunder alone, which, as the supernumeraries at a theatre, when an army is called for, are paraded across the stage and round again the requisite number of times, is marched through counsel's brief again and again in imposing array, the whole case is sought to be changed, and the examination of the case by counsel on both sides in the District Court, and by the Court is alleged to have been an entire misapprehension.

Surely the decision of so important a case as this can not be put upon such a mere blunder

(*c.*) Closely connected with this discovery is the idea advanced by claimants' counsel of a change of course by the schooner after the vessels came in sight of each other by reason of the fact that the wind had been hauling to the northward. He says she had been "circling in below and circling out and higher up."

Whether the schooner had been "circling in below" is not of the slightest consequence; and that she was "circling out" when the steamer came in view, is a statement without foundation, except in the blunder of which we have spoken, if by such language is meant a heading east of north. For the wind was west northwest and the schooner sailing *by the wind* must have been heading west of north; and so all the witnesses say she was heading.

And a change of the wind from southwest to northwest during the day could make no appreciable change in its direction during the 10 or 15 minutes that these vessels were in sight of each other.

IV.

The fact testified to by the witnesses for claimant on the appeal, that the Benefactor, being a flat-bottomed vessel, would make a great deal of leeway, (Jones 235, Rec'd 254), is one which throws light on the circumstances of this collision.

Neilson, the wheelsman of the steamer, says that he saw a slight paying off of the schooner, and that, after she had so paid off, she was bearing a point and a half on his port bow. Now, this is just about the amount of leeway which the steamer was making, so that the steamer while *heading* a little to westward of the schooner would be going in a direction *right at* her.

In this position, he says he was ordered to port his wheel; that he turned it round all the spokes and had *no sooner got it so*, than he was ordered to starboard it, and did so (fol. 116).

The Court will see that this porting of the wheel could not have made any material change in the direction of the steamer's course, for there was not time. And it is plain that owing to the fact that the vessels' courses were crossing so that the schooner's forward motion was bringing her up to the steamer's direction, and the steamer's drift to leeward was bringing her down towards the schooner, it became apparent to the captain of the steamer, before the porting had continued long enough to have any material effect, that she was not going to get by on the windward side of the schooner, and he then took the only remaining chance of escape by starboarding and trying to pass on the leeward side.

It nearly succeeded, and was, doubtless, *at that moment*, the measure which afforded the best prospect of escaping the collision. The difficulty was that he had postponed it till too late. He had run too near to the schooner before taking any measures at all, and it was

this closeness of his approach to the schooner which was the *causa causans* of the collision.

The Supreme Court has repeatedly insisted upon the necessity that the precautions to be taken by steamers on approaching sailing vessels should be both adequate and timely.

The Fairbanks, 9 Wall., 420.

This case is one which calls loudly for the enforcement of that requirement.

V.

The decree below should be affirmed.

BEEBE, WILCOX & HOBBS,
Proctors for Libellants.

F. A. WILCOX,
Of Counsel.